

Draft Biological Opinion Conclusions



	Species			Critical Habitat		
	Jeopardy	No Jeopardy	NLAA	Ad Mod	No Ad Mod	NLAA
Chlorpyrifos	1399 (88%)	130 (8%)	56 (4%)	169 (23%)	562 (76%)	11 (1%)
Malathion	1284 (81%)	192 (12%)	108 (7%)	163 (22%)	546 (74%)	31 (4%)
Diazinon	175 (12%)	843 (57%)	473 (32%)	20 (3%)	267 (41%)	372 (56%)

Notes:

Does not include no effect call determinations or determinations for experimental populations.



U.S. Fish & Wildlife Service

BRIEFING PAPER

TITLE: Pesticide Registration and Endangered Species Act Interagency Coordination

I. SUMMARY

Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the U.S. Environmental Protection Agency (EPA) is responsible for registering pesticides and ensuring that pesticides do not cause unreasonable adverse effects on the environment, which includes species listed as threatened or endangered (listed species) under the Federal Endangered Species Act (ESA). Pursuant to section 7 of the ESA, Federal agencies must, in consultation with and with the assistance of U.S. Fish and Wildlife Service (Service) and National Marine Fisheries Service (NMFS), ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of their critical habitat.

Until recently, the Service, EPA and NMFS used different risk assessment approaches to identify the potential effects of pesticides on threatened and endangered species and were unable to reach a consensus on an approach for assessing the risks to listed species. These different approaches to risk assessment impacted the ability of EPA, the Service and NMFS to complete consultation under the ESA. As a result, several lawsuits related to noncompliance of pesticide registration with section 7 of the ESA were filed against EPA, the Service and NMFS.

To resolve these differences, EPA, FWS, NMFS, and the United States Department of Agriculture (USDA) (collectively the agencies) asked the National Academy of Sciences (NAS) to evaluate the differing risk assessment approaches used by the agencies to identify the potential effects of pesticides on listed species. The NAS issued a report on April 30, 2013, entitled "Assessing Risks to Endangered and Threatened Species from Pesticides." The NAS report recommends that EPA, FWS, and NMFS take a common approach to assessing the potential effects of pesticides on listed species. The agencies are working collaboratively to implement the recommendations made in the NAS report.

Due to the complexity of these consultations, large number of species addressed (approximately 1,750 listed species and critical habitat for 650 species) and a concern regarding sustainability for future consultations, the agencies are also working towards identifying and incorporating streamlining measures, automation, and other efficiencies into the current and future consultation processes. The overarching goal of the interim approach is to collaboratively develop a practicable consultation process for future proposed pesticide registration actions that is efficient, transparent, and sustainable and meets the regulatory compliance under FIFRA and the ESA.

Pursuant to settlement agreements, the agencies are working together to complete consultations on nine chemicals (dazinon, chlorpyrifos, malathion, methomyl, carbaryl, atrazine, simazine, propazine and glyphosate) by December 2022.

II. CURRENT STATUS



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- The agencies have made significant progress in developing the approach used for conducting section 7 consultations on pesticide registrations.
- Biological opinions for the nine pesticides listed in the July 28, 2014, and February 19, 2016, settlement agreements are expected to be completed as follows:
 - Chlorpyrifos, Diazinon, and Malathion: December 31, 2017
 - Carbaryl and Methomyl: December 31, 2018
 - Atrazine, Simazine, Propazine and Glyphosate: December 31, 2022
- EPA released the draft biological evaluations (BE) for chlorpyrifos, diazinon and malathion for public comment, and the final BEs will be completed January 2017. The Service's draft biological opinions on these three pesticides are expected to be complete by May 2017.

III. EXTERNAL INTEREST

- Congress, specifically House Committees on Natural Resources and Agriculture as well as the Senate Committee on Agriculture, have been interested in the progress made toward completing biological opinions for the nine pesticides and working with stakeholders of the U.S. Department of Agriculture.
- The pesticide industry, agriculture community and environmental non-governmental organizations have also been interested in the ESA compliance of FIFRA. The agencies have conducted five stakeholder workshops to ensure stakeholder engagement in the process.

CONTACT: Gary Frazer, [REDACTED]

DATE: November 10, 2016

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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

PESTICIDE PROGRAM DIALOGUE
COMMITTEE MEETING
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May 18-19, 2016

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1 will go out for public comment, just like the draft BEs.

2 Then, that court mandated final biological opinion date
3 for these three chemicals is December 2017.

4 The next two chemicals we'll be working on will
5 be carbaryl and methomyl. They're about a year behind.
6 So, we're hoping to get draft BEs out for these two
7 chemicals by the end of the calendar year. Then, the
8 final biops are due in December 2018.

9 So, with that, I'm going to turn it over to
10 Patrice.

11 MS. ASHFIELD: Thank you, Anita. It's nice to
12 be here today representing the Fish and Wildlife Service.
13 Again, I am the Branch Chief for National Consultations.
14 You know, I thought I would start off just by saying
15 that, as you may or may not know, this is the first
16 opinion of this type that the Service will have ever
17 done, having, you know, to take a look at 1640 species,
18 and I think what is critical habitat around 650 or so.
19 So, obviously, quite an endeavor. With that, this lays
20 out a whole new set of kind of parameters on how we're
21 going to tackle something along these lines.

22 So, with that, I thought I would walk you

1 through, you know, an overview of where we're at
2 currently with the biological opinions and give you an
3 update on some of the areas.

4 For those of you who don't know, biological
5 opinions, set up per our regs, have very specific areas
6 that we will write and address. One of the first things,
7 in order to understand what is going on with our species,
8 and then, in order to take a look at the action and how
9 that action is going to affect that species, is we really
10 need to understand where our species are. You know, you
11 may think, gee, the Fish and Wildlife Service didn't have
12 current range maps for all those species. You know, you
13 might have been surprised by that.

14 In Section 7, a lot of times we're consulting
15 on some species a lot and other species not so much, and
16 some species not at all. So, one of our first tasks was
17 to lay out a current range map for each of our species.
18 FESTF was actually extremely instrumental in helping us
19 do this. They pulled together draft maps.

20 Then, we went through an exercise where we
21 reached out to our field offices. We have about 90 field
22 offices across the United States and in Hawaii and Puerto

1 Rico. They are a field office, those individuals who
2 know those species. Took a look at those range maps and
3 further refined them from what FESTF had done with the
4 draft map.

5 So, this actually is a huge step forward. I
6 always like to start off with it because it's something
7 we have completed and we now have a range map for every
8 one of our species.

9 So, one of the first steps in the biological
10 opinion, along with understanding where they are, is to
11 understand what's going on with that species. We call
12 that our status of the species. The status lays out, you
13 know, population numbers, as we know them, specific
14 locations of importance, some of the basic ecological
15 information of that species, and it will also bring in to
16 that beneficial actions that may be occurring that's helping
17 the species population or other stressors that's also
18 affecting that species.

19 So, with that, over I'm going to say about a
20 year ago, about the time I think we were part way
21 through our mapping exercise, we also started working on
22 having biologists pull together the status of the species

1 that we currently had, and then also starting to write
2 status of the species for species that we did not have
3 this information.

4 It was slow going. We had trouble getting enough
5 detailees to be able to help us with this. Once again,
6 FESTF stepped in and is currently assisting us on pulling
7 together the information on the status of the species.
8 So, while that looks a little daunting to see up there
9 that we still have over 900 statuses that have to be
10 completed, I'm optimistic with FESTF's help and some of
11 our detailees that are still working with us that we will
12 get this task done. As you can imagine, it's paramount
13 to understand what is going on with the species as we go
14 through the biological opinion process and be able to
15 assess the effects of the actions.

16 So, we also need to take a look at the critical
17 habitat. We need a status for the critical habitat. So,
18 again, you can see this one does need some more work. We
19 have over 100 partially done, but again, with FESTF's
20 help, we will get it done.

21 UNIDENTIFIED MALE: You're using an acronym I
22 don't know.

1 MS. ASHFIELD: Oh, I'm so sorry.

2 UNIDENTIFIED MALE: FESTF?

3 MS. ASHFIELD: Oh, excuse me, FESTF is the
4 FIFRA Endangered Species Task Force. This is my
5 understanding, they're a consortium of representatives
6 from different industries. I'm looking at Anita to make
7 sure I'm saying that correctly. I work a lot with Berna
8 Lynn. She's the coordinator right now. So, like I said,
9 they've been very helpful. I'm sorry to have thrown in
10 an acronym without explaining it. Sometimes you get so
11 used to saying some acronyms that they're almost like
12 words.

13 So, the next part in our biological opinion
14 will be the project description. Fortunately, because,
15 as Anita had talked about, we worked so closely with NMF
16 (phonetic) and with EPA, we'll be able to lift a lot of
17 the description right out of the BEs and pull that over
18 into our biological opinions. We do need to have our
19 biological opinion be a stand-alone document. It should
20 be something that the general public could pick up, read,
21 and understand what's going on. Of course, we'll always
22 be referring back to the BEs, but the project description

1 should be able to lay out what we're looking at and why.

2 There's another part of the biological opinion,
3 which is the baseline, which takes a look at the status
4 of the species within the action area. So, normally, for
5 us, in section 7, a federal agency will have an action,
6 whether it's building an airport, or a highway, or
7 something along those lines. So, when we take a look at
8 the status, we take a look at the status overall.

9 When we take a look at the baseline, we take a
10 look at the status of that species within the area that
11 is going to be effected. In this case, as Anita was
12 talking about with a couple of these chemicals, the
13 baseline, or maybe I should say, because a couple of them
14 are so ubiquitously used, the status and the baseline are
15 really going to be one in the same. However, for
16 diazinon, because the use isn't quite as widespread, we
17 will have a baseline. Currently, for that, I have a
18 biologist who I've tasked with, and he is working on this
19 to write up this section for the baseline section in the
20 diazinon biological opinion.

21 Speaking of that, I'll tell you also -- I
22 should have brought this up first -- we have at the Fish

1 and Wildlife Service here at headquarters beefed up our
2 staff to help us be able to accomplish this task. So,
3 currently, right now, I have eight biologists that are
4 working full time on these opinions. My newest person
5 just came in a couple days ago, but I'm still excited to
6 say that we have eight folks, four of them toxicologists.
7 Some of these folks, through the last two or two-and-a-
8 half years, have been working, as we said, continuously
9 with EPA and NMF. And then, some of my newer folks will
10 be coming up to speed.

11 So, the meaty part, the effects of the action,
12 this is the tough one. So, now we've laid the stage.
13 We've figured out where the species area. We figured out
14 what is going on with that species, how their status is
15 doing. So, now we're going to be taking a look at the
16 effects of the action. This is where we're going to be
17 working off of what EPA, and Fish and Wildlife Service,
18 and NMF have been working on. But we're going to expand
19 that in our effects.

20 So, for instance, a lot of the modeling that
21 Anita talked to you about was set up to take a look at is
22 the action likely to adversely affect that one

1 individual. So, when we take a look at this now, we're
2 going to be working with EPA and modifying some of these
3 models to be taking a look at. So, yes, they have
4 determined that an individual can be adversely affected,
5 but what does this mean to the population.

6 So, in some of the early work that we've been
7 doing, EPA has been talking about assisting us with being
8 able to take a look at meteorological data, for instance,
9 taking a look at I'm going to be talking to my field
10 offices, taking a look at out of a range, where is that
11 species, are there areas where the species has higher
12 density versus other areas.

13 For a lot of species, as we know, they're not
14 ubiquitously placed across their range. There's going to
15 be -- I'll use a species I'm familiar with, lease bells
16 verio (phonetic). There could be some drainages where
17 you're going to have higher populations of that species
18 versus other drainages.

19 So, we're taking a look at how can we add this
20 into the work that we're doing so that we're assessing,
21 you know, clear or more correctly the exposure of these
22 species to the chemicals.

1 One of the other things that we've been
2 focusing on in all the subgroups that we've been working
3 on is we've taken some representative species and we've
4 spent a lot of time taking a look at lease bells verio or
5 the power sheets skipper link (phonetic). We had a fish
6 species.

7 So, a lot of time has been focused on that.
8 We're going to take that and extrapolate that, then,
9 across different groups of species. So, for lease bells
10 verio, we'd be able to represent other insectivorous
11 (inaudible), for instance. So, I have right now over at
12 Fish and Wildlife Service, one of the things we're doing
13 is we're taking the 1640 species and grouping them into
14 major taxonomic groups, but then also subgroups. So, for
15 instance, out of our 80 freshwater and muscles, we'll be
16 grouping those into groups that make sense, so that we
17 can then assess a representative out of that subgroup.
18 Then, the others would be extrapolated from that.

19 So, after we go through this process, we take a
20 look at our status, our baseline, and our effects
21 section. We work on our conclusions. The objective of a
22 biological opinion is to determine whether the action

1 would jeopardize the continued existence of the species
2 or destroy or adversely modify critical habitat.

3 So, with that, in the conclusion, we would then
4 be taking a look at these effects for each of these
5 species. If the action does not jeopardize, we would
6 then be figuring out what do we think the take would be
7 pursuant to that action.

8 So, in simpler terms, back to my airport
9 development, et cetera, you might take two pairs of nat
10 catchers and Steven's kangaroo rat, for instance. We
11 normally do our take statements in, you know, numerical
12 type values. This pesticide consultation may be
13 something we'll be looking at having a different type of
14 take statement pursuant to our new rule that we just
15 passed using surrogacy for incidental take statements.

16 So, with that, then, is how we conclude our
17 biological opinions. I was trying to think if there's
18 anything -- I think that I've kind of covered that
19 overview of how we're hoping to proceed, some of the
20 things that we have accomplished. As you can see, we
21 have a lot more work for us in our future.

22 So, I think that covers it for me. I'll pass

1 it back to you.

2 MS. PEASE: Questions?

3 MR. HOUSENGER: Bob.

4 BOB: This is really just a question. So, that
5 was really interesting and way over my head. So, when
6 you get to a decision, say on the organophosphates, what
7 kinds of things will you do? Will you cancel the
8 product, or are there specific ranges of risk mitigation
9 options? What's the end game look like?

10 MS. PEASE: So, the end game, we're probably
11 not going to do anything until we get the biological
12 opinion, because that's where, you know, the Services
13 come to their jeopardy conclusion or no jeopardy
14 conclusion. We'll issue what they call reasonable and
15 prudent measures or reasonable and prudent alternatives.
16 So, those are basically the mitigation measures that we
17 would then be responsible for implementing in the context
18 of our pesticide registration.

19 So, at that point, you know, we hope that
20 before we get that final biological opinion, we will have
21 engaged in some meaningful conversation about what's
22 reasonable and prudent, and what we feasibly do with the

Executive Summary for Malathion ESA Assessment

This Biological Evaluation (BE) assesses whether the registered uses of malathion (PC code 057701), based on the U.S. Environmental Protection Agency's (EPA) proposed federal action, will result in a potential effect to an individual of an endangered and threatened (listed) species and/or its designated critical habitats. The evaluation also includes analysis of impacts to candidate species as well as species and critical habitat proposed for listing for conferencing purposes under section 7 of the Endangered Species Act (ESA). This evaluation, conducted as part of the registration review process (EPA's action under consultation), is based on interim scientific methods developed in response to recommendations of the National Research Council (NRC, 2013) and uses a three-step consultation process.

Step 1 consists of two parts: 1) establishing the action area for the proposed action, and 2) overlaying the listed, proposed, and candidate species (hereafter, "listed species" ranges and proposed and final critical habitat designations (hereafter, "critical habitat(s)" onto the action area (**Section 1.4.1**). This step identifies which species and critical habitats have the potential to be affected by the proposed action. A "no effect" determination is made for species and critical habitats whose ranges do not overlap with the action area and listed species that are presumed extinct as identified in the species reports. The categorization of "presumed extinct" are often difficult to ascertain and will be reviewed through outreach with FWS headquarters and field offices, as needed. Any listed species and/or critical habitat that warrants a "may affect" determination in Step 1 (*i.e.*, its range and/or critical habitat overlaps spatially with the action area and it is not presumed extinct) continues for further analysis in Step 2. Step 2 determines whether effects to individuals of listed species and/or Primary Constituent Elements (PCEs)/physical and biological features (PBFs) of critical habitat result in a "may affect, not likely to adversely affect (NLAA) determination, or a "may affect, likely to adversely affect" (LAA) determination. In Step 2, toxicity (indirect and direct effects data) and exposure information are analyzed using a weight-of-evidence (WoE) approach. These data are organized into lines of evidence that inform risk hypotheses and ultimately the effect determinations for listed species and their critical habitats. The NLAA determinations are submitted to the US Fish and Wildlife Service and the National Marine Fisheries Services (the Services) for concurrence, while the listed resources with a LAA determination are considered by the Services in their Biological Opinions (Step 3). This Biological Evaluation represents Steps 1 and 2 in the ESA pesticide consultation process for malathion.

General Information

Malathion is an organophosphate insecticide used on a wide variety of terrestrial food and feed crops, terrestrial non-food crops, aquatic food, non-agricultural indoor, outdoor sites, and for wide area public health uses. There is currently one active technical registrant for malathion and 96 active registrations (43 Section 3s, 53 Section 24c Special Local Needs, and no Section 18 Emergency Exemptions) which include formulated end-use products and technical grade malathion (see **APPENDIX 1-2**). Currently, there are 4 malathion products that are co-formulated with other active-ingredients. Malathion can be applied in a dust, liquid or encapsulated form. Aerial and ground application methods (including broadcast, fogger, and chemigation) are allowed (see **APPENDIX 1-3** for details).

Malathion will enter the environment via spray directly onto soil, foliage, or impervious surfaces. Spray drift and runoff are primary routes of offsite transport with volatilization and leaching occurring under certain conditions. Rainfall transports malathion off-field through runoff, soil erosion, and leaching. The primary route for malathion dissipation is microbial metabolism to malathion dicarboxylic and monocarboxylic acids (malathion DCA and malathion MCA, respectively). However, if malathion is in

contact with metabolically inactive surfaces such as dry soils or impervious surfaces common in non-agricultural settings, photo-oxidation to the degradate malaoxon can occur. Malaoxon dissipates and degrades similarly to malathion. Malathion DCA and MCA are not considered residues of toxicological concern (see **APPENDIX 1-9**).

Malathion is an organophosphate insecticide used to kill insects systemically and on contact. Organophosphate toxicity in animals is based on the inhibition of the enzyme acetylcholinesterase (AChE). Inhibition of AChE interferes with proper neurotransmission in cholinergic synapses and neuromuscular junctions which can lead to sublethal effects and mortality. The effects of malathion have been studied extensively in many taxa, particularly in fish and aquatic and terrestrial invertebrates (see **Chapter 2**). The BE considered more than 900 ecotoxicity studies for malathion (including (approximates) 225 fish and aquatic-phase amphibian studies, 260 aquatic invertebrate studies, 25 aquatic plant studies, 47 bird studies, 7 reptile and terrestrial-phase amphibian studies, 150 mammalian studies, 140 terrestrial invertebrate studies, and 49 terrestrial plant studies). Studies include acute and chronic laboratory studies with either technical or formulated malathion, and include both registrant-submitted and open literature studies (search of relevant open literature data conducted up through August 2013). Toxicity to taxa from exposure to other chemical stressors of concern (*i.e.*, malathion oxon, mixtures [*e.g.*, tank mixtures, formulated products, and environmental mixtures]) and non-chemical stressors (*e.g.*, temperature) are also considered.

Exposure Methods

Exposure values are based primarily on fate and transport model results. For aquatic exposures, the Pesticide in Water Calculator (PWC, v. 1.52, May 2016)[a new graphical user interface used to run Pesticide Root Zone Model (PRZM)/Variable Volume Water Body Model (VWWM)], AgDRIFT and AGricultural DISPersal (AGDISP) models are used to predict aquatic exposure in generic habitats, referred to as bins (see **Section 1.4.2.2.a.1**). Aquatic exposure results for the bin(s) most appropriate for the species and/or critical habitat being assessed are used. For terrestrial exposures, existing models [*e.g.*, TerrPlant, AgDRIFT, AGDISP, earthworm fugacity model, Terrestrial Herpetofaunal Exposure Residue Program Simulation (T-HERPS), Terrestrial Residue Exposure model (T-REX) and portions of the Terrestrial Investigation Model (TIM)] were combined into a single tool that is referred to as the Terrestrial Effects Determination tool (TED)(see **Section 1.4.2.2.a.2** and **ATTACHMENT 1-7**). A more detailed analysis using TIM and the Markov Chain Nest Productivity Model (MCnest) is also conducted for a subset of listed bird species. The models used in this BE can be found at <https://www.epa.gov/endangered-species/provisional-models-endangered-species-pesticide-assessments>.

Overlap Analyses

The mosquito adulticide is presumed to overlap with all of the listed species ranges and critical habitats because it has no specific geographic footprint. Other use layers (as identified in **ATTACHMENTS 1-2** and **1-3**) that overlap with a large percentage of listed species ranges and critical habitats (*i.e.*, these use sites overlap with ~50 – 90% of the species and critical habitats, by number) include: developed land, open space developed, pasture, other grains, vegetables and ground fruit, other row crops, orchards and vineyards, wheat, and corn. The actual degree of overlap of specific uses with a particular species range varies widely and will be impacted by off-site transport distances (*e.g.*, spray drift and downstream transport).

Effects Determinations

To help determine the potential for risk, effects thresholds are established (see Interim agreement¹). For mortality to animals, the one-in-a-million chance of mortality [based either on the 5th percentile of the Species Sensitivity Distribution (SSD) or a surrogate LD₅₀, LC₅₀, or EC_x] is used to assess direct effects to a listed species (for details, see **ATTACHMENT 1-4**). For potential indirect effects based on prey lethality for those species without obligate relationships, the exposure that results in a 10% effect for the 5th percentile species on an SSD for the prey species or the 10% effect level for the most sensitive prey species tested (if not enough data are available for a SSD) is used. For sublethal effects, the direct effects threshold for animals and plants is the lowest available NOAEC/NOAEL or other scientifically defensible effect threshold (EC_x) that can be linked to survival or reproduction. For animals, the indirect effects threshold is the LOAEC/LOAEL for growth or reproduction for relevant taxa. For plants and indirect effects, the threshold is the lowest available LOAEC or EC₅₀ value (aquatic plants) and the lowest LOAEC or EC₂₅ value (terrestrial and wetland plants). These thresholds are used with other available data in a weight-of-evidence (WoE) approach which integrates the body of evidence that is available for making an effects determination. For the exposure assessment, the overlap of species range and action area, the relevance of predictive models to simulate EECs, the quality of fate data for exposure modeling and monitoring data that may be available are considered. For the effects analysis, the number of studies and/or species tested in the available toxicity data, taxonomic surrogacy, the magnitude and/or types of effects observed, and incident data are considered. An overall risk finding (high, medium, low) and a finding on the overall confidence (high, medium, low) in the available exposure and effects data is made for each line of evidence to inform the effect determinations for listed species and critical habitats (see **ATTACHMENT 1-9**).

Effects Determinations Summary

Because of the multitude of uses and use patterns for malathion (including the mosquito adulticide use), the action area for malathion covers the entire US, including its territories. Therefore, all of the listed species ranges and critical habitats overlap with the action area and the “no effect” determinations largely involve species that are believed to be extinct (or extirpated from specific geographic areas) in USFWS documents and referenced in EPA species reports, but have not yet been delisted.

For malathion, the results of the Step 1 (**‘No Effect’** (NE) or **‘May Affect’** determinations) and Step 2 (**‘Not Likely to Adversely Affect’** (NLAA) or **‘Likely to Adversely Affect’** (LAA) determinations) for species and designated critical habitats are presented in **Tables 1** and **2**, respectively. For species/critical habitats with a NE determination in Step 1, no additional analyses are conducted (they do not proceed to Step 2). For malathion, all of the uses and use patterns modeled, result in threshold exceedances for most taxa. For species/critical habitats with NLAA determinations, they will be sent to the Services for concurrence. For species/critical habitats with a LAA determination, additional analyses will be conducted (*i.e.*, they proceed to Step 3).

TABLE 1. Summary of Species Effects Determinations for Malathion (Counts by Taxon).

1 Interim approaches and agreement: <https://www.epa.gov/endangered-species/interim-approaches-pesticide-endangered-species-act-assessments-based-nas-report>

TAXON	STEP 1 EFFECTS DETERMINATION		STEP 2 EFFECTS DETERMINATIONS		Totals
	NO EFFECT	MAY AFFECT	NOT LIKELY TO ADVERSELY AFFECT	LIKELY TO ADVERSELY AFFECT	
Amphibians	0	40	1	39	40
Aquatic Invertebrates	0	220	1	219	220
Birds	5	103	12	91	108
Fish	0	193	5	188	193
Mammals	2	107	20	87	109
Plants	0	961	2	959	961
Reptiles	0	48	0	48	48
Terrestrial Invertebrates	9	147	0	147	156
Total	16	1819	41	1778	1835
Percent of Total Number of Species (%)	1	99	2	97	

TABLE 2. Summary of Critical Habitat Effects Determinations for Malathion (Counts by Taxon).

DESIGNATED CRITICAL HABITAT TAXON	STEP 1 EFFECTS DETERMINATION		STEP 2 EFFECTS DETERMINATIONS		Totals
	NO EFFECT	MAY AFFECT	NOT LIKELY TO ADVERSELY AFFECT	LIKELY TO ADVERSELY AFFECT	
Amphibians	0	25	0	25	25
Aquatic Invertebrates	0	75	0	75	75
Birds	0	31	0	31	31
Fish	0	106	0	106	106
Mammals	0	32	5	27	32
Plants	0	462	3	459	462
Reptiles	0	17	0	17	17
Terrestrial Invertebrates	0	46	2	44	46
Total	0	794	10	784	794
Percent of Total Number of Critical Habitats (%)	0	100	2	98	

To: Jakob, Avivah[Jakob.Avivah@epa.gov]
From: Perry, Tracy
Sent: Wed 4/12/2017 4:22:56 PM
Subject: FW: Typeset FR Document Ready for Signature Package (17P-0055; FRL-9960-24)
17P-0055 version dated 4.5.17 final for signature.docx

Avivah – here the final version of the carbaryl/methomyl BE FR – it was signed by Yu-Ting.

From: Nguyen, Khue
Sent: Thursday, April 06, 2017 11:06 AM
To: Travers, Mary-F <travers.mary-f@epa.gov>
Cc: Perry, Tracy <Perry.Tracy@epa.gov>; Grable, Melissa <Grable.Melissa@epa.gov>
Subject: RE: Typeset FR Document Ready for Signature Package (17P-0055; FRL-9960-24)

Hi Mary,

There were minor editorial edits to this FR from a couple of the managers. We are sending the revised encoded version—this is the version that was signed this morning by our DD.

The signed version will be sent over to RCS today, with the typesetting request form, docket verification, and action information form.

Thanks,

Khue Nguyen

Chemical Review Manager

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April 13, 2017

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[REDACTED]
DWeinberg@wileyrein.com

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Re: "Final" Chlorpyrifos, Diazinon, and Malathion Biological Evaluations Sent
by EPA to Fish and Wildlife Service on January 18, 2017

Dear Secretary Zinke:

We are writing on behalf of our clients Dow AgroSciences, LLC ("DAS"), Makhteshim Agan of North America, Inc., d/b/a ADAMA ("ADAMA"), and FMC Corporation ("FMC") (together, the "OP Registrants"), to request that you (1) instruct the Acting Director of the Fish and Wildlife Service ("FWS") to return to the U.S. Environmental Protection Agency ("EPA") three Biological Evaluations ("BEs") that EPA transmitted to FWS on January 18, 2017; (2) direct that any effort to prepare biological opinions based on them be set aside; and (3) direct legal counsel representing FWS in *Center for Biological Diversity v. U.S. Fish and Wildlife Service et al.*, No. 11-cv-5108 (N.D. Cal.) ("*CBD v. FWS*"), to meet and confer on a timely basis with counsel for the other parties to that case, as required by Paragraph 4(c)(1) of the Stipulation Amending Original Stipulated Settlement and Order approved by the Court on July 28, 2014 (the "Stipulated Settlement"), to discuss further activity in that case. See Stipulated Settlement, *CBD v. FWS*, Dkt. No. 87.

Our clients and their affiliates hold EPA registrations for products containing one or more of the organophosphate ("OP") pesticide active ingredients that are the subject of the BEs (chlorpyrifos, diazinon, and malathion). The BEs are documents from EPA required by the "Interim Approaches" adopted during the Obama Administration in an effort to resolve controversies regarding the relationship between pesticide registration activities under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") and activities of EPA and the

April 13, 2017

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Departments of the Interior and Commerce under the Endangered Species Act (“ESA”).¹

Our clients believe that the Interim Approaches are fundamentally flawed and should be set aside. Drafts of the BEs were released for public review in April, 2016, and substantial comments submitted on those drafts explained the reasons for our clients’ view and demonstrated the many flaws in the draft documents.

When EPA sent final versions of the BEs to FWS, the Agency conceded that it had not responded to most of the comments it had received. This is confirmed in the three reports from expert consultants to our clients that are enclosed with this letter. Those comments also demonstrate that EPA has not even correctly applied in the BEs the processes described as the Interim Approaches.

We will not belabor here the matters addressed in the enclosed reports. But some representative examples of the BEs’ flaws include the following:

- A major lack of transparency necessary for evaluation and reproduction of results.
- Inclusion of proposed and candidate species that are not afforded protection under ESA.
- Many studies selected by EPA as sources of information on effects and exposure were not evaluated for data quality and relevance. When evaluated, many evaluations did not follow EPA’s own study quality criteria. In addition, many scientifically valid, registrant-submitted studies were not evaluated by the Agency, with no explanation. This is not justified and is contrary to EPA’s own guidance and the recommendations made by the National Academy of Sciences.
- Effects determinations were made assuming that product may be applied anywhere in the United States, without consideration of

¹ Interim Approaches for National-Level Pesticide Endangered Species Act Assessments Based on the Recommendations of the National Academy of Sciences April 2013 Report, *available at* <https://www.epa.gov/sites/production/files/2015-07/documents/interagency.pdf>.

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distinctions between use patterns, timing of applications, locations of use, and presence of listed species and critical habitats.

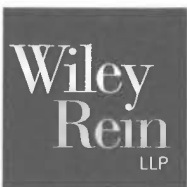
- Compounding of conservatism in the assessment of exposure, resulting in unrealistically high and sometimes physically impossible estimates.
- Failure to consider appropriate lines of evidence, as recommended by the National Academy of Sciences in order to determine the likelihood of an effect occurring.

EPA sought to excuse its failure to properly revise the drafts or otherwise respond to comments by asserting that the revisions were precluded by a legal obligation to complete biological opinions based upon the BEs by December 31, 2017.² That position is incorrect. EPA is not bound by any such obligation.

EPA presumably based its assertion on stipulations entered in court cases by FWS and the National Marine Fisheries Service (“NMFS”). The one of those stipulations to which FWS was a party did express an intent to complete a nationwide OP biological opinion by December 31, 2017. *See CBD v. FWS Stipulated Settlement* at 3.³ But it also expressly stated that FWS “is not obligated to” complete OP consultations by then, and provided that if there were to be a delay

² Office of Chemical Safety and Pollution Prevention’s Response to Comments on the Draft Biological Evaluations for Chlorpyrifos, Diazinon, and Malathion, at 2 (Jan. 17, 2017), *available at* <https://www3.epa.gov/pesticides/nas/final/response-to-comments.pdf>. In failing to “explain or support several assumptions critical to its conclusions,” EPA violated the Fourth Circuit Court of Appeals’ direction that an agency acting to implement the ESA must explain its analysis “with sufficient clarity” to allow stakeholders to determine whether the analysis is “the product of reasoned decisionmaking.” *Dow AgroSciences LLC v. Nat’l Marine Fisheries Serv.*, 707 F.3d 462, 464, 475 (4th Cir. 2013). For example, EPA relied on several data sets that it does not dispute are incomplete and/or inaccessible. But it never “cogently explain[ed] why.” *Id.* at 473.

³ The National Marine Fisheries Service entered into an analogous stipulation in May 2014 in which it agreed to complete an OP biological opinion by December 31, 2017. *See Stipulation and Order to Amend the Stipulated Settlement Agreement Affirmed by this Court on August 1, 2008, NW Coalition for Alternatives to Pesticides, et al. v. Nat’l Marine Fisheries Serv.*, No. 07-cv-01791 (W.D. Wash., May 21, 2014), Dkt. No. 50, at 6.



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parties would meet and confer to discuss appropriate actions and, if necessary, petition the Court to resolve any dispute. *Id.* at 4-5.

We recently have written to EPA Administrator Pruitt asking that he withdraw from FWS the three BEs at issue. However, we urge that you not await that action. Instead, our clients respectfully request that you promptly return the BEs to EPA and direct that any effort to prepare biological opinions based on them be set aside. Our clients similarly request that once you, NMFS, EPA, and presumably the U.S. Department of Agriculture (which was a party to development of the "Interim Approaches") have determined how the new Administration is going to address the "Interim Approaches" and, more broadly, the issue of FIFRA-ESA integration, you direct the legal counsel representing FWS in *CBD v. FWS* to meet and confer on a timely basis with counsel for the other parties to that case to discuss appropriate further actions.

Thank you for your prompt attention to these requests.

Sincerely,

A handwritten signature in dark ink, appearing to read "David B. Weinberg".

David B. Weinberg

Counsel to Dow AgroSciences, LLC;
Makhteshim Agan of North America,
Inc., d/b/a "ADAMA"; and FMC
Corporation

Enclosures

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cc (without attachments except as noted):

The Honorable Scott Pruitt, Administrator of the United States Environmental Protection Agency

The Honorable Wilbur Ross, Secretary of the United States Department of Commerce

The Honorable Michael Young, Acting Deputy Secretary of the United States Department of Agriculture

The Honorable Jim Kurth, Acting Director of the Fish and Wildlife Service (with attachments)

The Honorable Samuel D. Rauch, III, Acting Assistant Administrator for the National Marine Fisheries Service

The Honorable John Barrasso, Chairman, Senate EPW Committee

The Honorable Tom Carper, Ranking Member, Senate EPW Committee

The Honorable Rob Bishop, Chairman, House Committee on Natural Resources

The Honorable Raul Grijalva, Ranking Member, House Committee on Natural Resources

The Honorable Pat Roberts, Chairman, Senate Committee on Agriculture, Nutrition and Forestry

The Honorable Debbie Stabenow, Ranking Member, Senate Committee on Agriculture, Nutrition and Forestry

The Honorable Michael Conaway, Chairman, House Committee on Agriculture

The Honorable Collin Peterson, Ranking Member, House Committee on Agriculture

Dr. Sheryl H. Kunickis, Director, Office of Pest Management Policy, United States Department of Agriculture

Mr. Ray Starling, Special Assistant to the President for Agriculture, Trade and Food Assistance (with attachments)

Mr. Richard Keigwin, EPA OPP (with attachments)

Mr. George Oliver, DAS

Ms. Laura Phelps, ADAMA

Mr. Paul Whatling, FMC

Sent from my iPhone

Begin forwarded message:

From: "Cleland-Hamnett, Wendy" <Cleland-Hamnett.Wendy@epa.gov>
Date: April 20, 2017 at 7:24:10 PM EDT
To: "Keigwin, Richard" <Keigwin.Richard@epa.gov>, "Jakob, Avivah" <Jakob.Avivah@epa.gov>
Subject: CLA Letters re BEs

I've mentioned this in the weekly report, but I want to send up a "Hot Issue for Decision" Paper on this topic, that can be used – hopefully – to get a decision. Please email to me whenever you have a draft, and I'll review. Thanks.

Wendy Cleland-Hamnett

Acting Assistant Administrator

Principal Deputy Assistant Administrator

Office of Chemical Safety & Pollution Prevention

U.S. Environmental Protection Agency

202-564-2910

cleland-hamnett.wendy@epa.gov

We need to develop a short (no more than 2 page) issue paper for the Administrator that discusses the issues raised by the registrants about the 3 OP BEs, the implications for the 2 NMC BEs, and a recommended path forward.

Once I can log into my computer, I'll send you the recommended format.

I need to get a draft to Wendy for her review by early next week.

Below is the paragraph that Wendy included in her "Thursday Note" to the Administrator.

Registrants Request That Pesticide Biological Evaluations Be Withdrawn

Dow AgroScience, LLC; Makhteshim Agan of North America, Inc.; and FMC Corporation sent letters (4/13/2017) to EPA, U.S. Fish and Wildlife Service and the National Marine Fisheries Service requesting that the chlorpyrifos, diazinon and malathion BEs be withdrawn from the services, and that the services stop work on their Biological Opinions. They claim that the interim approaches used in the BEs to analyze nation-wide effects on endangered species are flawed. OCSPP had anticipated releasing draft BEs for carbaryl and methomyl on April 18, 2017 for public comment. The services are subject to a settlement agreement deadline to issue biological opinions on these pesticides by December 31, 2017. Next Step:

Ex. 5 - Deliberative Process

Rick Keigwin

Acting Director, Office of Pesticide Programs

U.S. Environmental Protection Agency



Aaron Hobbs

President

RISE, Responsible Industry for a Sound Environment

202-872-3861

www.pestfacts.org

www.debugthemyths.com

From: Jorjani, Daniel [mailto:daniel_jorjani@ios.doi.gov]

Sent: Monday, May 01, 2017 6:17 PM

To: Aaron Hobbs <ahobbs@pestfacts.org>

Cc: Jay Vroom <JVroom@croplifeamerica.org>; Rachel Lattimore <RLattimore@croplifeamerica.org>; Imad Saab <isaab@croplifeamerica.org>

Subject: Re: Follow-up: CropLife & RISE meeting re ESA

Aaron: Thank you for the material. It was a pleasure meeting you and your team. Best, Dan

On Mon, May 1, 2017 at 9:54 AM, Aaron Hobbs <ahobbs@pestfacts.org> wrote:

Daniel,

Good morning. Please find the information you we discussed attached.

Thank you for meeting with us on Friday and the thoughtful discussion. We look forward to working with you and the team. I've copied my colleagues Rachel, Imad, and Jay. Please let us know if you have any questions.

Sincerely,

Aaron Hobbs

President

RISE

202-872-3860

www.debugthemyths.com

Endangered Species Act: Section 7 Consultations and Next Steps

PPDC Meeting, May 3, 2017, Session 4e

- The EPA has continued to work closely with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the Services) to develop shared interim scientific methods for use in pesticide consultations, based on recommendations from the 2013 National Academy of Sciences' report "Assessing Risks to Endangered and Threatened Species from Pesticides".
- Given consultation deadlines and existing resources, the EPA will continue to address stakeholder recommendations in a phased and iterative approach.
- EPA released final Biological Evaluations (BEs) for three pilot chemicals including chlorpyrifos, diazinon, and malathion in January 2017.
 - Revisions to the final BEs based on stakeholder feedback include refined aquatic modeling, error corrections, improved transparency specifically related to the Terrestrial Effects Determination (TED) tool and the Weight of Evidence (WoE) matrices, and additions/deletions to the list of endangered and threatened species.
 - Posted documents include Response to Comments received during the 60-day public comment period for the draft BEs.
 - On April 13, 2017, Dow AgroSciences, LLC; Makhteshim Agan of North America, Inc.; and FMC Corporation sent letters to the political leadership of EPA, FWS, and the NMFS making a number of requests. The letter requested that EPA withdraw the BEs for chlorpyrifos, diazinon, and malathion; that the Services stop work on their Biological Opinions (BiOps) for these pesticides; and that the Services modify various ESA-related settlement agreements to allow more time for the agencies to complete pesticide consultation. CropLife America voiced support for the request in a subsequent April 19, 2017, memorandum to EPA, FWS, and NMFS. EPA is considering the request.
- Draft BEs for carbaryl and methomyl are expected to be released soon for 60-day public comment.
- Based on previous public comments, the EPA is exploring the following additional revisions for future BEs:
 - reducing the size and complexity of the BEs;
 - a move toward more probabilistic approaches;
 - refinements in geospatial data used to define species ranges and potential use sites;
 - use of watershed-level aquatic exposure models;
 - improved methods for estimating exposures in riverine and estuarine/marine habitats;
 - improved characterization and consideration of magnitude of effects; and
 - a consideration in the timing and duration of potential pesticide exposures (e.g., linking exposure with life-history variables).
- EPA is also exploring ways to use species-specific toxicity data earlier in the first step of the BE process to refine, and still maintain a protective screening process.
- The EPA continues to work with the Services on interim methods for Step 3 (i.e., the Services' determination of "jeopardy/adverse modification" or "no jeopardy/no adverse modification") in the Biological Opinion (BiOp).

- The EPA expects to release the Services' draft BiOps for chlorpyrifos, diazinon, and malathion for a 60-day public comment period in late May or early June 2017 with final BiOps by December 2017. The EPA expects to release final BiOps for methomyl and carbaryl by December 2018.

To: Dravis, Samantha[dravis.samantha@epa.gov]; Bolen, Brittany[bolen.brittany@epa.gov]; Mclean, Kevin[Mclean.Kevin@epa.gov]; Minoli, Kevin[Minoli.Kevin@epa.gov]
Cc: Keigwin, Richard[Keigwin.Richard@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
From: Beck, Nancy
Sent: Fri 5/5/2017 11:55:12 AM
Subject: ESA issue bubbling up
[ESA Issue Paper industry letters 5-5-17v2.docx](#)

Samantha and Kevin,

Under the Endangered Species Act (ESA), EPA develops Biological Evaluations (BEs) for pesticides which are then the backbone of Biological Opinions (BiOps) issued by the services (FWA, NMFS). There is a court ordered settlement deadline for the services to complete 3 BiOps by December 2017.

Ex. 5 - Deliberative Process

Ex. 5 - Deliberative Process

Further details are in the attached. Because we think the Services are likely to release the BiOps in the end of May, we will need to engage quickly.

Perhaps we can chat next week?

Thanks,

Nancy

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator

Office of Chemical Safety and Pollution Prevention

Ex. 6 - Personal Privacy

beck.nancy@epa.gov

Gary Frazer

Mon May 15, 2017

5:30am - 6am CLA update -- Alyssa Hausman

Calendar: Gary Frazer
Who: Alyssa Hausman, Gary Frazer

7am - 8am AD Staff meeting -- Room 3038

Video call: b5-CI
Calendar: Jim Kurth
Created by: Roslyn Sellars
Who: Maureen Foster, Jerome Ford, Paul Rauch, gregory_sheehan@fws.gov, Gary Frazer, bryan_arroyo@fws.gov, Charisa Morris, Jim Kurth, Denise Sheehan, Cynthia Martinez, betsy_hildebrandt@fws.gov, Stephen Guertin, Brian Bloodsworth, David Hoskins, Casey Hammond, Jay Slack, william_c_woody@fws.gov, Kenneth Taylor

11am - 12pm Call with Pat Montanio NOAA Fisheries re: Status and Trends Funding

Video call: b5-CI
Where: Conference line - b5-CI Passcode b5-CI
Calendar: Gary Frazer
Created by: Lois Wellman
Who: sydney.peoples@noaa.gov, Gary Frazer, Megan Lang, Jonathan Phinney, pat.montanio@noaa.gov, tracy.jones@noaa.gov

1pm - 2pm ES Pesticide Litigation and Consultation Briefing

Video call: b5-CI
Where: MIB Room 3038 (Conference line - b5-CI Passcode b5-CI
Calendar: Gary Frazer
Created by: Lois Wellman
Who: Kevin Haugrud, Gary Frazer, Thomas Irwin, Benjamin Jesup, Tameka Lewis-Robinson, Daniel Jorjani, Aurelia Skipwith, Roslyn Sellars, Casey Hammond, Mariagrazia Caminiti, Ann Navaro, Gina Shultz, Linus Chen, James Monroe, Jim Kurth, Maureen Foster

Tue May 16, 2017

5am - 8am Chief's Meeting - Skyline

Where: Hamilton Conference Room
Calendar: Gary Frazer
Created by: Lois Wellman

5:30am - 6:30am Chief's Meeting - Skyline

Video call: b5-CI
Where: Hamilton Conference Room
Calendar: Gary Frazer

8am - 9am DOI Annual Law Enforcement Officers Memorial Ceremony

Video call: b5-CI
Where: Bison Bistro
Calendar: Gary Frazer

From: Milhouse, Gloria
Location: DCRoomEast3156/DC-EPA-EAST-OCSP
Importance: Normal
Subject: ESA Interagency Meeting with EPA, Commerce, USDA and DOI

Ex. 6 - Personal Privacy

Ex. 6 - Personal Privacy

Start Date/Time: Mon 6/19/2017 7:00:00 PM

End Date/Time: Mon 6/19/2017 8:00:00 PM

[ESA Background Briefing 6 19 2017.pptx](#)

[ESA Meeting Agenda 6.19.docx](#)

[ESA Background Briefing 6.19 \(short version\).pptx](#)

Purpose/Subject: To discuss ESA implementation improvements.

Location Address: 1201 Constitution Avenue, NW – Washington, DC

Invitees for the meeting:

EPA/OCSP-IO

Wendy Cleland-Hamnett

Nancy Beck

EPA/OCSP-OPP

Rick Keigwin

Marietta Echeverria

EPA / OP

Samantha Dravis

Sara Greenwalt

Department of Interior

Casey Hammon Special Assistant to the Secretary (FWS)

Virginia Johnson, Special Assistant to the Secretary (Fish, Wildlife and Parks)

Aurelia Skipwith, Deputy Assistant Secretary

Dan Jorjani, DOI Solicitor

Commerce:

James Uthmeier, Deputy General Counsel (recommended by USDA)

George Kelly

Earl Comstock

USDA:

Stephen Vaden, Acting General Counsel

Rebecka Adcock, Office of the Secretary

Sheryl Kunickis, Director of USDA's Office of Pest Management Policy

To: Jakob, Avivah[Jakob.Avivah@epa.gov]; Cleland-Hamnett, Wendy[Cleland-Hamnett.Wendy@epa.gov]
From: Beck, Nancy
Sent: Wed 6/21/2017 11:03:04 PM
Subject: FW: OP Registrants' Letter
[Letter to Administrator Scott Pruitt 4-13-17.pdf](#)
[ATT00001.htm](#)

FYI

Nancy B. Beck, Ph.D., DABT

Deputy Assistant Administrator, OCSPP

Ex. 6 - Personal Privacy

beck.nancy@epa.gov

From: Schwab, Justin
Sent: Wednesday, June 21, 2017 11:08 AM
To: Beck, Nancy <Beck.Nancy@epa.gov>
Cc: Fotouhi, David <fotouhi.david@epa.gov>; Baptist, Erik <baptist.erik@epa.gov>
Subject: Fwd: OP Registrants' Letter

Let's discuss soon.

Sent from my iPhone

Begin forwarded message:

From: "Weinberg, David" <DWeinberg@wileyrein.com>
Date: June 21, 2017 at 11:05:59 AM EDT
To: "Schwab.Justin@EPA.gov" <Schwab.Justin@EPA.gov>
Subject: OP Registrants' Letter

Dear Mr. Schwab:

Following up on our recent conversation, my clients would appreciate any information you can provide regarding the Agency's intentions with regard to responding to my April 13 letter.

Thank you.

David Weinberg

David B. Weinberg | Attorney at Law
Wiley Rein LLP
1776 K Street NW | Washington, DC 20006
T: 202.719.7102 | M: 202.549.1004 | DWeinberg@wileyrein.com
www.wileyrein.com | [Bio](#) | [LinkedIn](#) | [Twitter](#)

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Mariagrazia Caminiti, Daniel Jorjani

All day Keable A/L

Thu Jun 29, 2017 - Mon Jul 10, 2017

Video call:

(b) (5)

Who: Daniel Jorjani, Kevin Haugrud, Edward Keable, Mariagrazia Caminiti

Going? Yes

8am - 10am Desk Time

Video call:

(b) (5)

Calendar: Daniel Jorjani

Created by: Mariagrazia Caminiti

10am - 10:30am FIFRA-ESA followup

Video call:

(b) (5)

Where: SOL Conf rm. 6342 - Call-in: (b) (5) participant code: (b) (5)

Who:

Daniel Jorjani, viktorias.z.seale@ceq.eop.gov, mary.b.neumayr@ceq.eop.gov, christopher.d.prandoni@ceq.eop.gov, Mariagrazia Caminiti, Casey Hammond, Greg Sheehan

Going? Yes

10am - 10:30am FIFRA-ESA followup

Video call:

(b) (5)

Where: SOL Conf rm. 6342 - Call-in: (b) (5) participant code: (b) (5)

Who:

Mariagrazia Caminiti, Casey Hammond, viktorias.z.seale@ceq.eop.gov, Greg Sheehan, christopher.d.prandoni@ceq.eop.gov, mary.b.neumayr@ceq.eop.gov, Daniel Jorjani

Going? Yes

11am - 12pm DMR Weekly Managers Mtg

Where: RJ/O

Calendar: Kevin Haugrud

Who:

Richard McNeer, Karen Hawbecker, Bovard, Tom, Daugherty, Dennis, Gary Lawkowski, Daniel Jorjani

12pm - 1pm ESA lunches

Video call:

(b) (5)

Where: DJ/O

Who:

Kevin Haugrud, Benjamin Jesup, Aurelia Skipwith, Ann Navaro, Daniel Jorjani, Mariagrazia Caminiti

Going? Yes

From: Daniel Jorjani
To: Jay Vroom
Cc: daniel_jorjani@ios.doi.gov; Brittany Benton; marigrace.caminiti@sol.doi.gov
Subject: Re: Invitation to Meet with CroPLife America Strategic Oversight Council (SOC)
Date: Wednesday, July 19, 2017 5:32:06 AM

Jay - Interested. Adding Marigrace. If unable to make work, would recommend FWS Deputy Director Greg Sheehan.

Sent from my iPhone

On Jul 10, 2017, at 3:30 PM, Jay Vroom <JVroom@croplifeamerica.org> wrote:

Dear Daniel,

On behalf of CLA's Strategic Oversight Council, I am inviting you to come and meet with SOC at its meeting here in DC in July, specifically around the topic of ESA. The meeting will be held at CLA's offices, at 1156 15th Street, NW, Suite 400.

The meeting starts at 10:00a on Tuesday, July 25, goes through lunch, and ends at 5:00p. We will have a brief cocktail reception at 5:30p, followed by dinner, close by our offices. The meeting will resume on Wednesday morning at 8:00a with breakfast, through lunch and ending at 2:00p.

We would be more than happy to work with your schedule if you are available those dates.

I look forward to hearing from you.

Jay

Jay Vroom

President & CEO

CroPLife America

1156 15th Street, NW

Suite 400

Washington, DC 20005

Direct Dial (202) 872-3850

Main Switchboard (202) 296-1585

Mobile (202) 427-7932

Fax (202) 466-5832

Email vroom@croplifeamerica.org

Executive Assistant Mary Jo Tomalewski (mjtomalewski@croplifeamerica.org,
202.872.3849 o, 703.943.9705 m)

Web www.croplifeamerica.org

Mariagrazia Caminiti, Daniel Jorjani

12pm - 1pm Rick/Dan and Jack lunch

Video call:

(b) (5)

Who: Kevin Haugrud, Richard Goeken, Daniel Jorjani, Mariagrazia Caminiti

Going? Yes

12pm - 1pm Rick/Dan and Jack lunch

Video call:

(b) (5)

Who: Mariagrazia Caminiti, Daniel Jorjani, Kevin Haugrud, Richard Goeken

Going? Yes

1pm - 1:45pm Meeting with Michael Bogert et al on ESA Regulatory Reform

Video call:

(b) (5)

Where: Room 6120

Calendar: Gareth Rees

Who:

Aurelia Skipwith, Daniel Jorjani, James Cason, Todd Willens, Mariagrazia Caminiti, Gareth Rees

Description:

Attendees: Michael Bogert Joe Nelson Quin Shea, Kathy Steckelberg, Sarah Ball, Rick Loughery Subject Endangered Species Act Regulatory Reform POC L. Michael Bogert • Attorney at Law Parsons Behle & Latimer 800 West Main Street, Suite 1300 • Boise, Idaho 83702 Main 208.562.4900 • Direct 208.562.4907 MBogert@parsonsbehle.com

1pm - 1:45pm Meeting with Michael Bogert et al on ESA Regulatory Reform

Video call:

(b) (5)

Where: Room 6120

Calendar: Gareth Rees

Who:

Daniel Jorjani, Gareth Rees, Todd Willens, Aurelia Skipwith, Mariagrazia Caminiti, James Cason

Description:

Attendees: Michael Bogert Joe Nelson Quin Shea, Kathy Steckelberg, Sarah Ball, Rick Loughery Subject Endangered Species Act Regulatory Reform POC L. Michael Bogert • Attorney at Law Parsons Behle & Latimer 800 West Main Street, Suite 1300 • Boise, Idaho 83702 Main 208.562.4900 • Direct 208.562.4907 MBogert@parsonsbehle.com

1:30pm - 2pm Weekly Scheduling Review Meeting with Ethics and General Law

Where: Melinda Loftin's Office -- MIB 5309

Calendar: Timothy Nigborowicz

Who:

Jennifer Heindl, Caroline Boulton, Joshua Campbell, Timothy Nigborowicz, Kimberly Benton, Leila Getto, Russell Roddy, Daniel Jorjani

2pm - 2pm Heidi Hansen w/DJorjani

Video call:

(b) (5)

Who: Daniel Jorjani, Mariagrazia Caminiti, Heidi Hansen

Going? Yes

Description: 202-368-3169

From: Ashfield, Patrice
To: [Gina Shultz](#); [Craig Aubrey](#)
Subject: I am proud to present...
Date: Friday, August 4, 2017 2:20:22 PM
Attachments: [CONCLUSIONS_chlor mala diaz_080417_master list1.xlsx](#)

our beautiful master table of our final determinations per chemical per species

tab 2 has a small key

woohoo!

Patrice M. Ashfield
Branch Chief for National Consultations
Headquarters, Fish and Wildlife Service
5275 Leesburg Pike, MS:ES
Falls Church, VA 22041
(703) 358-2478 office

From: [Raabe, Andrew](#)
To: [Golden, Nancy](#)
Subject: Re: mammal b5-DP CYP
Date: Tuesday, August 15, 2017 9:08:26 AM
Attachments: [landSTable Mammals Chlor 8142017 Final.docx](#)
[landSTable Mammals Diaz 08 9 17 clean.docx](#)
[landSTable Mammals Mala 8 8 18 clean.docx](#)

Here are the latest versions with the scorecard species too. Thanks!

Andrew Raabe
Branch of National Consultations
U.S. Fish and Wildlife Service Headquarters
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
(703) 358-1994 office

On Tue, Aug 15, 2017 at 6:56 AM, Golden, Nancy <nancy_golden@fws.gov> wrote:
These are by entity ID, in order of your table:

b5-DP



Everything else looks OK. I did not check the 6 species with scorecards yet - if you could point me to the latest version of those I can take a look. Also let me know where I can find the latest version of the tables for the other chemicals and I'll check those.

Nancy H. Golden, Ph.D.
Environmental Contaminants Specialist
U.S. Fish & Wildlife Service
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803


email: Nancy_Golden@fws.gov

From: Shultz, Gina
To: [Ashfield, Patrice](#)
Subject: Re: updated PP
Date: Monday, August 28, 2017 2:20:24 PM

go ahead and send one, since we have already shared scorecards

Gina Shultz
Deputy Assistant Director, Ecological Services
U.S. Fish and Wildlife Service
MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803


On Mon, Aug 28, 2017 at 5:05 PM, Ashfield, Patrice <patrice_ashfield@fws.gov> wrote:
are you concerned about the scorecard or can we send one?

Patrice M. Ashfield
Branch Chief for National Consultations
Headquarters, Fish and Wildlife Service
5275 Leesburg Pike, MS:ES
Falls Church, VA 22041
(703) 358-2478 office

Begin forwarded message:

From: David Bernhardt <dwbernhardt@ios.doi.gov>
Date: October 5, 2017 at 12:49:29 PM EDT
To: gary_frazer@fws.gov, DOI <todd_willens@ios.doi.gov>, greg_j_sheehan@fws.gov
Cc: Gareth Rees <gareth_rees@ios.doi.gov>
Subject: Pesticides

All: I apologize for the request, but I need to be updated on the status of consultations related to pesticides.

Please work with Gareth to schedule a briefing for mid-next week.

In addition, please provide me any briefing material -- that you have already generated -- you think might be useful for my preparation. I am at a baseline of virtually zero. I have been told we have a December court ordered deadline that we are not going to meet.

Thank you,
David

Sent from my iPhone

David Bernhardt

Wed Oct 11, 2017

All day Cathy - Annual Leave

Tue Oct 10, 2017 - Sat Oct 14, 2017

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Catherine Gulac

9am - 9:30am Daily Scheduling & Communications Meeting

Where: Office of the Secretary

Calendar: (b) (6) - Ryan Zinke

Created by: Caroline Boulton

Who: David Bernhardt, Scott Hommel, Laura Rigas, Michael Argo, Downey Magallanes

9:30am - 11am

Bi-Weekly Meeting with Assistant Secretaries, Directors, & Advisors

Video call:

(b) (5), (b) (6)

Where: 5160 Conference Room

Calendar: (b) (6) - Ryan Zinke

Created by: Caroline Boulton

Who:

Aaron Thiele, Laura Rigas, James Cason, Todd Wynn, Rick May, Lori Mashburn, Elinor Renner, Benjamin Cassidy, (b) (6) - Ryan Zinke, gregory_sheehan@fws.gov, Austin Ewell, Scott Hommel, Natalie Davis, Jason Larrabee, John Tanner, John Tahsuda, Downey Magallanes, Leila Getto, Vincent Devito, Douglas Domenech, Gareth Rees, Micah Chambers, Andrea Travnick, David Bernhardt, Daniel Jorjani, Katharine MacGregor, Alan Mikkelsen, Russell Roddy, Scott Cameron, Timothy Williams, Todd Willens, Greg Sheehan, Scott Angelle, Michael Argo, David Mihalic

11am - 11:30am

Meeting with KPMG auditors regarding the Statement on Auditing Standards

Where: Secretary's Conference Room

Calendar: (b) (6) - Ryan Zinke

Created by: Leila Getto

Who:

Olivia Ferriter, Christopher Stubbs, jasef-sargent@kpmg.com, Andrea Shorter, Douglas Glenn, Amy Holley, Kimberly McGovern, jhaueriii@kpmg.com, hkwilliams@kpmg.com, Downey Magallanes, David Bernhardt, mfreihofer@kpmg.com, Morgan Aronson, Scott Cameron, Mary Kendall, Teresa Hunter

1pm - 2pm Briefing with FWS

Video call:

(b) (5), (b) (6)

Where: 6120

Calendar: David Bernhardt

Created by: Catherine Gulac

Who:

Lois Wellman, Peg Romanik, Thomas Irwin, Gary Frazer, Gina Shultz, Todd Willens, Craig Aubrey, Greg Sheehan, Mariagrazia Caminiti, Richard Goeken, Roslyn Sellars, David Bernhardt

David Bernhardt

2:30pm - 3pm Meeting with Comms

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: David Bernhardt, Russell Newell

3pm - 4pm Meeting with BLM

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Kevin Haugrud, David Bernhardt, Katharine MacGregor, Michael Nedd, Karen Hawbecker, Linda Thurn, Tracie Lassiter, Richard Cardinale, Mariagrazia Caminiti, Yolando Mack-Thompson, Brian Steed

4pm - 5pm DOI Operations Meeting - ASIA

Video call:

(b) (5), (b) (6)

Where: Room 6120

Who:

Micah Chambers, Downey Magallanes, James Burckman, Gavin Clarkson, Gareth Rees, Bryan Rice, Anna Owens-Brown, Weldon Loudermilk, Scott Hommel, Hankie Ortiz, John Tahsuda, Charles Addington, James James, Michael Black, Margaret Creel, James Cason, Douglas Lords, Jason Thompson, Laura Rigas, Russell Newell, John Tanner, bart.stevens@bie.edu, tony.dearman@bie.edu, David Bernhardt

Going? Yes

5pm - 5:30pm Meeting with Downey

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

Thu Oct 12, 2017

All day Cathy - Annual Leave

Tue Oct 10, 2017 - Sat Oct 14, 2017

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Catherine Gulac

8:30am - 9am Meeting with Elena Gonzalez

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Elena Gonzalez, David Bernhardt

David Bernhardt

9:30am - 10am Depart B Ramp en route EEOB

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

10am - 11:30am October President's Management Council Meeting

Where: EEOB 430ABC

Calendar: dustin_s._brown@omb.eop.gov

Created by: David Bernhardt

Who:

Warren, Peter N. EOP/OMB, 'Arthur.McGlynn@treasury.gov', David Bernhardt, 'wwarren@usaid.gov', 'joseph.conaty@ed.gov', 'Tim.Horne@gsa.gov', Herbst, Ellen EOP, 'garry.p.reid.civ@mail.mil', Schneider, Grant M. EOP/OMB, 'kari.a.bingen.civ@mail.mil', 'SchurmanCJ2@state.gov', 'Hugler.Edward@DOL.GOV', 'Flynn.mike@epa.gov', 'jeff.rosen@dot.gov', Petrucci, Alexandra M. EOP/OMB, 'Victor.McCree@nrc.gov', 'david.tillotson1.civ@MAIL.MIL', 'mark.bradley@nara.gov', 'emily.murphy@gsa.gov', 'kathleen.mcgettigan@opm.gov', 'Claire.Grady@hq.dhs.gov', 'charles.phalen@nbib.gov', Field, Lesley A. EOP/OMB, Weichert, Margaret M. EOP/OMB, 'robert.carter@gsa.gov', Menasce, Flavio . EOP/OMB, Hanlon, Daniel EOP/OMB, 'david.eagles@hud.gov', Bussow, Mark A. EOP/OMB, 'jferrini@nsf.gov', 'matthew.moury@hq.doe.gov', 'thomas.bowman@va.gov', 'allie.coetzee@sba.gov', Lofthus, Lee EOP, 'Nancy.Berryhill@ssa.gov', 'Kody.Kinsley@TREASURY.GOV', 'charles.keckler@hhs.gov', Reger, Mark A. EOP/OMB, 'Dan.Brouillette@hq.doe.gov', 'William.evanina@ic.fbi.gov', Eanes, Matthew C., Graves, Margaret H. EOP/OMB, Cutts, Matthew D. EOP/OMB, Schneider, Grant, 'chip.fulghum@hq.dhs.gov', Nutt, Fred M. EOP/OMB, Fitzpatrick, John P. EOP/NSC, 'groberts@fbi.gov', 'ahunter@nasa.gov', 'mike.young@obpa.usda.gov', Mary Reding - M1X, 'KEVIN.HANRETTA@VA.GOV', 'Josie Beets - M1X'

11:30am - 12pm Depart EEOB en route DOI

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

12:30pm - 1pm Presentation of 20 Year Pin to Richard Cardinale

Video call:

(b) (5), (b) (6)

Where: Room 6616 (ASLM Conference Room)

Calendar: David Bernhardt

Created by: Gareth Rees

1:30pm - 2pm Interview - Katie Tubb

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Lori Mashburn, David Bernhardt

2pm - 2:45pm Meeting with Rep. Mark E. Amodei (NV-2)

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Micah Chambers, David Bernhardt, Amanda Kaster

David Bernhardt

3pm - 4pm Briefing with FWS

Video call:

(b) (5), (b) (6)

Where: 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Todd Willens, Gary Frazer, David Bernhardt, Richard Goeken, Thomas Irwin, Roslyn Sellars, Craig Aubrey, Peg Romanik, Mariagrazia Caminiti, Gina Shultz, Greg Sheehan, Lois Wellman

4pm - 5pm DOI Operations Meeting - ASLM

Video call:

(b) (5), (b) (6)

Where: Room 6120

Who:

Gareth Rees, John Ruhs, Fred Cruise, Karla Cook, Walter Cruickshank, Laura Rigas, Casey Hammond, Russell Newell, James Cason, Patrick Braxton, Michael Barre, Margaret Schneider, Vincent Devito, John Tanner, Katharine MacGregor, Brian Steed, Linda Thurn, Jill Moran, Glenda Owens, Yolando Mack-Thompson, Cally Younger, Thomas Lillie, Scott Angelle, Micah Chambers, Downey Magallanes, Tracie Lassiter, Scott Hommel, Richard Cardinale, Michael Nedd, David Bernhardt

Going? Yes

5pm - 5:30pm

Meeting with Brian Ballard and Wallace Cheves, Skyboat Management on NC and SC Land Issues

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Fri Oct 13, 2017

All day Cathy - Annual Leave

Tue Oct 10, 2017 - Sat Oct 14, 2017

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Catherine Gulac

All day Ivan - AWS Day

Fri Oct 13, 2017 - Sat Oct 14, 2017

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

David Bernhardt

5pm - 5:30pm Follow up call

Where: 3130A WJC-E (Call in number (b) (5), access code (b) (5))

Calendar: beck.nancy@epa.gov

Created by: David Bernhardt

Who: Gareth Rees, beck.nancy@epa.gov, Dourson, Michael, David Bernhardt, Baptist, Erik

5:30pm - 6:30pm Meeting/Briefing - VNF Change Rule

Video call:

(b) (5), (b) (6)

Where: 6120

Created by: Catherine Gulac

Who:

Karen Hawbecker, Linda Thurn, Tracie Lassiter, Brian Steed, Katharine MacGregor, James Tichenor, Kevin Haugrud, Kathleen Benedetto, Peter Mali, Timothy Spisak, Gareth Rees, Christopher Rhymes, Richard Cardinale, David Bernhardt, Michael Nedd

Going? Yes

Thu Oct 26, 2017

9am - 9:30am Depart B Ramp en route 730 Jackson place

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt

9:30am - 10:30am Meeting with White House Counsel and CEQ

Video call:

(b) (5), (b) (6)

Where: 730 Jackson Place

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt

10:30am - 11am Daily Scheduling & Communications Meeting

Where: Office of the Secretary

Calendar: (b) (6) - Ryan Zinke

Created by: Caroline Boulton

Who:

David Bernhardt, Michael Argo, Downey Magallanes, (b) (6) - Ryan Zinke, Scott Hommel, Laura Rigas

10:30am - 11am Depart Jackson Place en route DOI

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt

David Bernhardt

10:30am - 11am Meeting with Gary Frazer

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, Gary Frazer, David Bernhardt

11am - 12pm Briefing with Fish and Wildlife Service

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Todd Willens, Michael Gale, Gary Frazer, Roslyn Sellars, David Bernhardt, Catherine Gulac, Thomas Irwin, Greg Sheehan

4pm - 5pm DOI Operations Meeting - ASLM

Video call:

(b) (5), (b) (6)

Where: Room 6120

Who:

Richard Cardinale, Katharine MacGregor, Linda Thurn, David Bernhardt, Thomas Lillie, Brian Steed, John Tanner, Glenda Owens, Michael Barre, Scott Angelle, Tracie Lassiter, Yolando Mack-Thompson, Cally Younger, Laura Rigas, Micah Chambers, Patrick Braxton, Gareth Rees, Margaret Schneider, Russell Newell, Fred Cruise, Jill Moran, Casey Hammond, Michael Nedd, James Cason, Downey Magallanes, Vincent Devito, Scott Hommel, Karla Cook, John Ruhs, Walter Cruickshank

Going? Yes

Fri Oct 27, 2017

All day Ivan - AWS Day

Fri Oct 27, 2017 - Sat Oct 28, 2017

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

9am - 9:10am Daily Scheduling & Communications Meeting

Where: Office of the Secretary

Calendar: (b) (6) - Ryan Zinke

Created by: Caroline Boulton

Who:

Laura Rigas, Michael Argo, David Bernhardt, Scott Hommel, Downey Magallanes, Russell Newell, (b) (6) - Ryan Zinke

9:10am - 9:40am Prebrief for Meeting with Administrator Rao

Where: Secretary's Office

Calendar: (b) (6) - Ryan Zinke

Created by: Leila Getto

Who: Katharine MacGregor, Downey Magallanes, David Bernhardt

David Bernhardt

10am - 10:45am Bi-Weekly Meeting with Inspector General

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Mary Kendall, David Bernhardt

11am - 11:30am Meeting with Elena Gonzalez and Sylvia Burns

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: David Bernhardt, Elena Gonzalez, Sylvia Burns

1:30pm - 2:30pm Meeting with Administrator Rao

Where: Secretary's Office

Calendar: (b) (6) - Ryan Zinke

Created by: Leila Getto

Who: Downey Magallanes, David Bernhardt, Katharine MacGregor, James Cason

3pm - 3:30pm Follow-up with Gary Frazer

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Gary Frazer, David Bernhardt, Todd Willens

3:30pm - 4pm Meeting with Micah Chambers

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt, Micah Chambers

Mon Oct 30, 2017

9:30am - 10am Weekly Check-In Call with Mike Catanzaro

Video call:

(b) (5), (b) (6)

Where: Mike to call 202-208-6291

Calendar: David Bernhardt

Created by: Gareth Rees

10am - 10:30am Depart B Ramp en route EEOB

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

David Bernhardt

10:30am - 11:30am **NEC PCC: ESA Section 7 (Read Ahead Attached)**

Where: EEOB SoW 230A (WAVES link in notes)

Calendar: magdelana.a.delahoyde@who.eop.gov

Created by: David Bernhardt

Who:

Brooke, Francis J. EOP/OVP, Catanzaro, Michael J. EOP/WHO, Starling, Ray A. EOP/WHO, stephen.vaden@ogc.usda.gov, Dourson, Michael, Domesle, Alexander R. EOP/CEQ, rebeckah.adcock@osec.usda.gov, Bonfitto, Jordan P. EOP/WHO, beck.nancy@epa.gov, Baptist, Erik, Prandoni, Christopher D. EOP/CEQ, juthmeier@doc.gov, David Bernhardt, Moran, John S. EOP/WHO, Todd Willens, Neumayr, Mary B. EOP/CEQ

11:30am - 12pm **Depart EEOB en route DOI**

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

12pm - 1pm **Weekly Brown-Bag Check-in**

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt, James Cason

1pm - 2pm **Depart Office**

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

2pm - 3pm **(No title)**

Video call:

(b) (5), (b) (6)

Where: (b) (6)

Calendar: David Bernhardt

3pm - 4pm **Acting Assistant Secretaries weekly Meeting**

Video call:

(b) (5), (b) (6)

Where: Conf Rm 6120

Created by: Jean Parrish

Who:

Benjamin Cassidy, Thomas Irwin, Katharine MacGregor, Todd Willens, Douglas Domenech, Gareth Rees, Shirley Lewis, James Cason, John Tahsuda, Catherine Callaway, Andrea Travnicek, Downey Magallanes, Daniel Jorjani, Jason Larrabee, Lori Mashburn, Todd Wynn, Laura Rigas, Tracie Lassiter, Timothy Williams, Amanda Kaster, Roslyn Sellars, Mariagrazia Caminiti, Micah Chambers, Tameka Lewis-Robinson, Scott Cameron, David Bernhardt

Going? Yes

David Bernhardt

Tue Oct 31, 2017

8:30am - 10am BLM Executive Leadership Team

Video call:

(b) (5), (b) (6)

Where: Room 5160

Calendar: David Bernhardt

Created by: Gareth Rees

10am - 11:30am (b) (6)

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

1pm - 2pm Weekly Politicals Meeting

Where: Secretary's Conference Room- 5160

Calendar: Natalie Davis

Who:

Shirley Lewis, Stephen Wackowski, Lori Mashburn, Downey Magallanes, Elinor Renner, John Bockmier, Timothy Williams, Russell Roddy, Austin Ewell, William Dove, gregory_sheehan@fws.gov, Alan Mikkelsen, Todd Willens, Richard Goeken, Aaron Thiele, Michael Argo, Katharine MacGregor, Gary Lawkowski, Joshua Campbell, Steven Howke, John Tahsuda, Eli Nachmany, Scott Hommel, Idavis@osmre.gov, Gavin Clarkson, Douglas Domenech, Laura Rigas, Brian Pavlik, Vincent Devito, James Cason, Thomas Baptiste, Marshall Critchfield, Micah Chambers, Steven Smith, Heather Swift, Wesley Bullock, Greg Sheehan, Zachariah Gambill, Daniel Jorjani, Brian Steed, Alex Hinson, Christopher Stolte, Andrea Travnicek, Amanda Kaster, Jason Funes, Virginia Johnson, Rick May, David Bernhardt, David Mihalic, Russell Newell, Scott Angelle, Casey Hammond, Lacey Smethers, Todd Wynn, Brendan Quinn, Caroline Boulton, Leila Getto, Cally Younger, Kathleen Benedetto, Ryan Nichols, Aurelia Skipwith, John Tanner, Blake Deeley, Brandon Middleton, Benjamin Cassidy, Preston Beard, Scott Cameron, James Schindler, Jason Larrabee, Christine Bauserman

2pm - 2:30pm Meeting with Scott

Video call:

(b) (5), (b) (6)

Where: 6144

Calendar: Scott Hommel

Created by: Elinor Renner

Who:

Daniel Jorjani, Rick May, Downey Magallanes, Scott Hommel, David Bernhardt, Vincent Devito, Todd Willens

3pm - 3:30pm Meeting with Exec Sec

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: David Bernhardt, Mark Lawyer, Juliette Lillie

David Bernhardt

3:30pm - 3:45pm Meeting with John Tahsuda

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Anita Personius, John Tahsuda, David Bernhardt

3:45pm - 4pm Meeting Gary Frazer

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, Gary Frazer, David Bernhardt

4pm - 5pm DOI Operations Meeting - AS/FWP

Video call:

(b) (5), (b) (6)

Where: Room 6120

Who:

Gareth Rees, Bob Vogel, Laura Rigas, Roslyn Sellars, Lisa Mendelson, John Tanner, Tameka Lewis-Robinson, Jason Larrabee, Janice DeSordi, Lena McDowall, Greg Sheehan, Michael Reynolds, Thomas Irwin, David Bernhardt, gregory_sheehan@fws.gov, Aurelia Skipwith, Scott Hommel, Charisa Morris, Downey Magallanes, Jim Kurth, Russell Newell, Micah Chambers, Maureen Foster, Todd Willens, James Cason, Tasha Robbins, Stephen Guertin

Going? Yes

5pm - 5:30pm Meeting w/ Jackie Schutz, Florida

Video call:

(b) (5), (b) (6)

Where: (David's Office)

Calendar: Katharine MacGregor

Created by: Tracie Lassiter

Who: Gareth Rees, Katharine MacGregor, David Bernhardt

Wed Nov 1, 2017

10:15am - 10:45am Depart B Ramp en route WH

Video call:

(b) (5), (b) (6)

Where: B Ramp

Calendar: David Bernhardt

Created by: Catherine Gulac

10:45am - 11am 10:45am Arrive at West Wing

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

David Bernhardt

11am - 12:15pm Cabinet Meeting

Video call:

(b) (5), (b) (6)

Where: WH

Calendar: David Bernhardt

Created by: Catherine Gulac

12pm - 1pm Bi-Weekly Principals Brown-Bag

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Daniel Jorjani, Downey Magallanes, Michelle Brown, Katharine MacGregor, Andrea Travnicsek, David Bernhardt, Douglas Domenech, Mariagrazia Caminiti, Scott Hommel, Gisella Ojeda-dodds, Shirley Lewis, Laura Rigas, Todd Willens, Micah Chambers, Elinor Renner, Scott Cameron, Caroline Boulton, Tracie Lassiter, Catherine Callaway, Jason Larrabee, James Cason, John Tahsuda

12:15pm - 12:15pm Depart WH en route DOI MIB

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Catherine Gulac

1pm - 1:45pm Update Briefing with FWS

Video call:

(b) (5), (b) (6)

Where: 6120 - Call-in (b) (5) Participant Code (b) (5) # (Leader Code (b) (5) #)

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Gary Frazer, David Bernhardt, Roslyn Sellars, Nancy Brown-Kobil, Gareth Rees, Richard Goeken, Mariagrazia Caminiti, Thomas Irwin, Greg Sheehan, Benjamin Jesup, Todd Willens, Peg Romanik

1:45pm - 2:30pm NO MEETINGS

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

2:30pm - 4:30pm Meeting with EPA

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt

David Bernhardt

2:30pm - 3pm Meeting with Mike Ingram

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

4:30pm - 5pm Briefing for NPR 1A Interview

Video call:

(b) (5), (b) (6)

Where: Room 6120 - Call-in (b) (5) Code (b) (5) # (Leader Code (b) (5) #)

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Todd Willens, Tasha Robbins, Aurelia Skipwith, David Bernhardt, Heather Swift, Jason Larrabee

David Bernhardt

Wed Nov 1, 2017

10:15am - 10:45am Depart B Ramp en route WH

Video call:

(b) (5), (b) (6)

Where: B Ramp

Calendar: David Bernhardt

Created by: Catherine Gulac

10:45am - 11am 10:45am Arrive at West Wing

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

11am - 12:15pm Cabinet Meeting

Video call:

(b) (5), (b) (6)

Where: WH

Calendar: David Bernhardt

Created by: Catherine Gulac

12pm - 1pm Bi-Weekly Principals Brown-Bag

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Daniel Jorjani, Downey Magallanes, Michelle Brown, Katharine MacGregor, Andrea Travnicek, David Bernhardt, Douglas Domenech, Mariagrazia Caminiti, Scott Hommel, Gisella Ojeda-dodds, Shirley Lewis, Laura Rigas, Todd Willens, Micah Chambers, Elinor Renner, Scott Cameron, Caroline Boulton, Tracie Lassiter, Catherine Callaway, Jason Larrabee, James Cason, John Tahsuda

12:15pm - 12:15pm Depart WH en route DOI MIB

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Catherine Gulac

1pm - 1:45pm Update Briefing with FWS

Video call:

(b) (5), (b) (6)

Where: 6120 - Call-in (b) (5) Participant Code (b) (5) # (Leader Code (b) (5) #)

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Gary Frazer, David Bernhardt, Roslyn Sellars, Nancy Brown-Kobil, Gareth Rees, Richard Goeken, Mariagrazia Caminiti, Thomas Irwin, Greg Sheehan, Benjamin Jesup, Todd Willens, Peg Romanik

David Bernhardt

4pm - 5pm DOI Operations Meeting - ASIA

Video call:

(b) (5), (b) (6)

Where: Room 6120 - Call-in (b) (5) Participant Code (b) (5) #

Who:

Jason Thompson, Hankie Ortiz, tony.dearman@bie.edu, John Tanner, James Burckman, Russell Newell, Micah Chambers, Downey Magallanes, Michael Black, John Tahsuda, James James, Gareth Rees, bart.stevens@bie.edu, David Bernhardt, Anna Owens-Brown, Scott Hommel, Margaret Creel, Gavin Clarkson, James Cason, Bryan Rice, Laura Rigas, Charles Addington, Douglas Lords, Weldon Loudermilk

Going? Yes

4pm - 5pm FIFRA Registrations and ESA

Where:

Dept of Justice, 950 Pennsylvania Ave., NW Room 2143 (Call in (b) (5) ; code (b) (5))

Calendar: jonathan.brightbill@usdoj.gov

Created by: David Bernhardt

Who:

Kevin Haugrud, David Bernhardt, Govindan, Jay (ENRD), kristen.l.gustafson@noaa.gov, McArthur, Eric (OASG), 'Schwab, Justin', Snow, Corinne (ENRD), Richard Goeken, samuel.rauch@noaa.gov, 'baptist.erik@epa.gov'

Wed Nov 8, 2017

8:30am - 9am Meeting with Amos Eno

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

9:30am - 11am

Bi-Weekly Meeting with Assistant Secretaries, Directors, & Advisors

Video call:

(b) (5), (b) (6)

Where: 5160 Conference Room

Calendar: (b) (6) - Ryan Zinke

Created by: Caroline Boulton

Who:

Leila Getto, Jason Larrabee, Russell Roddy, (b) (6) - Ryan Zinke, Daniel Jorjani, Alan Mikkelsen, Benjamin Cassidy, Caroline Boulton, Todd Wynn, Scott Cameron, Aaron Thiele, Katharine MacGregor, Lori Mashburn, Andrea Travnicek, John Tahsuda, Douglas Domenech, Elinor Renner, David Mihalic, Austin Ewell, Brenda Burman, Scott Hommel, Laura Rigas, Todd Willens, Micah Chambers, Vincent Devito, Michael Argo, Greg Sheehan, John Tanner, James Cason, Joseph Balash, Scott Angelle, Downey Magallanes, Timothy Williams, David Bernhardt, gregory_sheehan@fws.gov, Rick May, Gareth Rees

11am - 11:30am Meeting with Casey Hammond

Video call:

(b) (5), (b) (6)

Where: 6114

Calendar: David Bernhardt

Created by: Catherine Gulac

Who: David Bernhardt, Casey Hammond

David Bernhardt

Thu Nov 9, 2017

All day Ivan - Out of Office

Thu Nov 9, 2017 - Fri Nov 10, 2017

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

8:30am - 9am Check-in with Gary Frazer

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Gary Frazer, David Bernhardt

9:30am - 10am Kate MacGregor

Video call:

(b) (5), (b) (6)

Where: 6114

Created by: Catherine Gulac

Who: David Bernhardt, Katharine MacGregor, Gareth Rees

Going? Yes

10:15am - 11am Meeting with State Official

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: OIEA OS, David Bernhardt, James Cason

11am - 12pm Monthly Meeting with Doug Domenech AS, Insular Affairs

Where: Secretary's Office

Calendar: (b) (6) - Ryan Zinke

Created by: Lena Getto

Who:

Downey Magallanes, Douglas Domenech, David Bernhardt, Nikolao Pula, Todd Willens, Scott Hommel

1pm - 1:45pm Briefing with AS/WS and PMB

Video call:

(b) (5), (b) (6)

Where: Room 6120 - Call-in (b) (5) Code (b) (5) # (Leader Code (b) (5) #)

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Todd Willens, Kerry Rae, David Palumbo, Evann Rogers, David Bernhardt, James Hess, Daniel Jorjani, Michelle Brown, Alan Mikkelsen, Mariagrazia Caminiti, Michaela Noble, Andrea Travnicek, Karen Senhadji, Deborah Lawler, Scott Cameron, Steve Glomb, Lorri Gray, Christina Kalavritinos

David Bernhardt

4pm - 5pm DOI Operations Meeting - AS/FWP

Video call:

(b) (5), (b) (6)

Where: Room 6120

Who:

Greg Sheehan, Roslyn Sellars, Jason Larrabee, Tameka Lewis-Robinson, Thomas Irwin, Lena McDowall, Stephen Guertin, Michael Reynolds, Micah Chambers, Gareth Rees, Scott Hommel, Todd Willens, Maureen Foster, John Tanner, Aurelia Skipwith, Charisa Morris, Russell Newell, James Cason, Downey Magallanes, Janice DeSordi, Bob Vogel, Tasha Robbins, Sue Masica, Jim Kurth, David Bernhardt, Laura Rigas, gregory_sheehan@fws.gov

Going? Yes

5pm - 7pm No meetings

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

Wed Nov 29, 2017

9am - 9:30am Daily Scheduling & Communications Meeting

Where: Secretary's Office

Calendar: (b) (6) - Ryan Zinke

Created by: Caroline Boulton

Who:

Michael Argo, John Tanner, Downey Magallanes, Todd Wynn, Laura Rigas, David Bernhardt, Scott Hommel

9:15am - 9:45am Depart C Street en route Rayburn House Office Building

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

10am - 12pm

Hearing Before the Subcommittee on the Interior, Energy, and the Environment and the Subcommittee on Intergovernmental Affairs Committee on Oversight and Government Reform

Video call:

(b) (5), (b) (6)

Where: Room 2157 - Rayburn House Office Building

Calendar: David Bernhardt

Created by: Gareth Rees

David Bernhardt

12pm - 1pm Bi-Weekly Principals Brown-Bag

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Caroline Boulton, Catherine Callaway, Tracie Lassiter, Daniel Jorjani, Laura Rigas, Jason Larrabee, Shirley Lewis, Downey Magallanes, David Bernhardt, Micah Chambers, Scott Hommel, Elinor Renner, James Cason, Todd Willens, Mariagrazia Caminiti, Gisella Ojeda-dodds, Scott Cameron, John Tahsuda, Katharine MacGregor, Michelle Brown, Douglas Domenech, Andrea Travnicek

12pm - 12:30pm Depart Rayburn Building en route DOI

Video call:

(b) (5), (b) (6)

Calendar: David Bernhardt

Created by: Gareth Rees

1pm - 1:30pm Meeting with Gary Frazer

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Gary Frazer, David Bernhardt

4pm - 5pm Meeting with Steve Wackowski and Jim Cason

Video call:

(b) (5), (b) (6)

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Stephen Wackowski, Lesia Monson, David Bernhardt, James Cason, Catherine Gulac

5pm - 6pm Briefing with PMB

Video call:

(b) (5), (b) (6)

Where: Room 6120

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

David Bernhardt, Catherine Gulac, James Cason, Olivia Ferriter, Adrienne Moss, Denise Flanagan, Downey Magallanes, Scott Cameron

5pm - 6:30pm White House State, Local, Tribal Veterans Reception

Where: Secretary's Office

Calendar: (b) (6) - Ryan Zinke

Created by: Leila Getto

Who: Todd Wynn, Tami Heilemann, David Bernhardt, Eli Nachmany, Laura Rigas

Gary Frazer

Wed Oct 25, 2017

6:30am - 7:30am Mitigation Bankers (Ecological Restoration Business Association) meeting

Video call: [REDACTED]
Where: MIB 3038
Calendar: Gary Frazer
Created by: Lois Wellman
Who: Gary Frazer, Craig Aubrey, Ben Thatcher

8:30am - 9:30am DOI Bat Week event

Video call: [REDACTED]
Where: MIB cafeteria courtyard
Calendar: Gary Frazer

8:30am - 9am FWS Package Briefing

Video call: [REDACTED]
Where: Conference Room 3144
Calendar: Gary Frazer
Created by: Lois Wellman
Who: Gloria Bell, Jason Larrabee, Tasha Robbins, Thomas Irwin, Maureen Foster, Megan Appar, Bivan Patnaik, Greg Sheehan, Roslyn Sellars, Aurelia Skipwith, Gary Frazer
Description: Other AD participants will be notified weekly once packages are identified from their program.

11am - 11:30am Meeting w/DepSec

Video call: [REDACTED]
Where: 6120
Calendar: Gareth Rees
Created by: Catherine Gulac
Who: Thomas Irwin, Richard Goeken, Roslyn Sellars, Gareth Rees, Gary Frazer, David Bernhardt, Nancy Brown-Kobil, Greg Sheehan, Mariagrazia Caminiti

12pm - 1pm Meeting on Delisting/downlisting work plan

Video call: [REDACTED]
Where: Rayburn 2007
Calendar: Chris Nolin
Who: jocelyn.hunn@mail.house.gov, Bridget Fahey, Gary Frazer, Chris Nolin, chris_tomassi@appro.senate.gov, ryan_hunt@appro.senate.gov, darren.benjamin@mail.house.gov

Thu Oct 26, 2017

5am - 7am Maria

Video call: [REDACTED]
Calendar: Gary Frazer

7:30am - 8am Meeting with Gary Frazer

Video call: [REDACTED]
Where: Room 6114
Calendar: David Bernhardt
Created by: Gareth Rees
Who: Todd Willens, Gary Frazer, David Bernhardt

8am - 9am BRIEFING (FWS, David Bernhardt and Todd Willens) - Rm 6120

Video call: [REDACTED]
Where: Room 6120
Calendar: Gary Frazer

9:30am - 10:30am Pesticide Consultation Call (conference line) [REDACTED] Passcode: [REDACTED]

Video call: [REDACTED]
Where: Gary's office
Calendar: Gary Frazer
Created by: Lois Wellman
Who: Gary Frazer, Craig Aubrey, Nancy Brown-Kobil, Patrice Ashfield, Rebecca Finley, Gina Shultz

Gary Frazer

10:45am - 12pm National ES Town Hall

Video call: [b5-C]

Calendar: FWHQ ES Calendar

Created by: Lois Wellman

Who:

blackburn.robby@epa.gov, Trish Adams, Sherry Skipper, Caitlin Snyder, Angela Okolie, Colleen Fahey, Paul Comlish, Valerie Fellows, charles_williams@fws.gov, Sonjia Harris, Chun-Xue Ren, Jason Miller, Leona Laniawe, joyce_allen@fws.gov, Julie Moore, John Morse, Natchanon Ketram, Celecia Lee, Jonathan Phinney, Debby Crouse, Frankie Green, Diane Bowen, Robert Barba, ron_vandervort@fws.gov, Carey Galst, Mark Abramovitz, Sue Ellis, Chris Tanner, Jonathan Jaka, Rachel London, Robyn Blackburn, Holly Herod, Eileen Harke, Jeffrey Herod, Luther Perkins, Ellen VanGelder, Kathryn Bissell, Barry Forsythe, skipper.sherry@epa.gov, Ken Crabb, Nancy Green, Teresa Fish, Jeanette Green, Jennifer Zosh, Catherine Liller, Megan Kelhart, Nathan Zorich, janine_vannorman@fws.gov, George Noguchi, Karen Anderson, Christina Kravitz, Lois Wellman, Stephanie Nash, Jeff Newman, Andy Devolder, Richard Henry, david_harrelson@fws.gov, Kelly Hornaday, George Schrader, Ben Thatcher, Dorothy Herda, Janice Engle, Katie Niemi, Jennifer Thompson, FWHQ ES Calendar, Jane Harner, Nancy Golden, Steve Reagan, Gary Frazer, Mark Pavelka, Victoria Foster, Craig Aubrey, kayla_miller@fws.gov, Dana Wright, FWHQ Ecological Services Staff, Lisa Ellis, Bridget Fahey, Don Morgan, Christy JohnsonHughes, Sara Pollack, Krae Stieffenhofer, Ashley Stilson, Martha BalisLarsen, Patrice Ashfield, Amy Brisendine, Rusty Griffin, Heather Bell, Jennifer Servis, Rosemary Burk, Dana Hartley, Anne Garvin, Madeline Prush, Mitch Bergeson, cheryl_amrani@fws.gov, Richard Gooch, Sarah Quamme, Kristy Hatch, Brenda Bryant, Nic Huber, Megan Lang, Gina Shultz, Tara Nicolaysen, Andrew Cruz, Maricela Constantino, Keith Paul, Daniel Elbert, Sarah Kilpatrick, Steve Boateng, Andrew Raabe, Kelly Niland, Jennifer Neely, Karen Myers, Beth Forbus, John Swords, Parks Gilbert, lewis_gorman@fws.gov

Going? Yes

Description:

Call in Number: [b5-C] Participant passcode: [b5-C] Participants can join the event directly at [b5-C] Or URL: <https://www.mymeetings.com/nc/join/> Conference number: [b5-C] Audience passcode: [b5-C] To view Closed Captioning: After joining the event Select View > Panels > Manage Panels. From 'Available Panels' select Multimedia Viewer > Add > OK Click the arrow at the top left corner of the Multimedia Viewer panel to open and display captioning.

11am - 12pm National ES Town Hall

Video call: [b5-C]

Calendar: charles_williams@fws.gov

Who:

Rusty Griffin, Carey Galst, Nathan Zorich, kayla_miller@fws.gov, Celecia Lee, Kelly Niland, Natchanon Ketram, Debby Crouse, Megan Kelhart, skipper.sherry@epa.gov, Beth Forbus, Heather Bell, Valerie Fellows, Daniel Elbert, Dorothy Herda, Megan Lang, Lois Wellman, cheryl_amrani@fws.gov, Holly Herod, Diane Bowen, Teresa Fish, Rachel London, Jeanette Green, Janice Engle, Sarah Kilpatrick, Jennifer Servis, Trish Adams, Brenda Bryant, Julie Moore, Sue Ellis, Karen Myers, Mark Abramovitz, blackburn.robby@epa.gov, John Swords, FWHQ Ecological Services Staff, Catherine Liller, Sherry Skipper, Mitch Bergeson, Christina Kravitz, Craig Aubrey, Jonathan Phinney, Eileen Harke, Ben Thatcher, Amy Brisendine, Richard Henry, Christy JohnsonHughes, Mark Pavelka, janine_vannorman@fws.gov, Steve Boateng, Angela Okolie, Jeff Newman, Andrew Raabe, Leona Laniawe, Jennifer Neely, Dana Wright, Colleen Fahey, Victoria Foster, Kathryn Bissell, ron_vandervort@fws.gov, George Noguchi, Katie Niemi, Sonjia Harris, Robert Barba, John Morse, Jeffrey Herod, Jonathan Jaka, david_harrelson@fws.gov, Caitlin Snyder, George Schrader, Keith Paul, Paul Comlish, Chris Tanner, charles_williams@fws.gov, Dana Hartley, Sarah Quamme, Andrew Cruz, Sara Pollack, Robyn Blackburn, Chun-Xue Ren, lewis_gorman@fws.gov, Kelly Hornaday, Thompson, Gina Shultz, Martha BalisLarsen, Patrice Ashfield, Tara Nicolaysen, Gary Frazer, Nic Huber, Don Morgan, Bridget Fahey, Kristy Hatch, Lisa Ellis, Frankie Green, Ellen VanGelder, Rosemary Burk, Parks Gilbert, Stephanie Nash, Nancy Golden, Andy Devolder, Barry Forsythe

Going? No

Fri Oct 27, 2017

7:30am - 8:30am Pesticide Call (conference line [b5-C] passcode [b5-C])

Video call: [b5-C]

Where: Polar Bear at Skyline

Calendar: Gary Frazer

Created by: Lois Wellman

Who: Gary Frazer, Craig Aubrey, Nancy Brown-Kobil, George Noguchi, Rebecca Finley, Gina Shultz

12pm - 12:30pm Follow-up with Gary Frazer

Video call: [b5-C]

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, David Bernhardt, Gary Frazer

Mon Oct 30, 2017

5:30am - 6am CLA update -- Alyssa Hausman

Calendar: Gary Frazer

Who: Alyssa Hausman, Gary Frazer

Gary Frazer

7am - 8am AD Staff meeting - Rm 3038

Video call: [REDACTED]
Calendar: Jim Kurth
Created by: Thomas Irwin
Who:
Edward Grace, Paul Souza, Kenneth Taylor, Barbara Wainman, Maureen Foster, Jim Kurth, Zachariah Gambill, Cynthia Martinez, Denise Sheehan, Aurelia Skipwith, Bud Cribley, Greg Sheehan, Brian Bloodsworth, Charisa Morris, David Hoskins, gregory_sheehan@fws.gov, Kashyap Patel, Gary Frazer, Janine Velasco, Paul Rauch, Jerome Ford, Georgia Basso, Chris Nolin, Stephen Guertin, Seth Mott

10am - 10:30am Mexican Wolf Briefing [Updated: Per Todd Willens via Cathy]

Video call: [REDACTED]
Where: AS/FWP conference room - [REDACTED] passcode [REDACTED]
Calendar: Jason Larrabee
Created by: Thomas Garcia
Who:
Greg Sheehan, Todd Willens, Catherine Gulac, Ted Koch, Gary Frazer, Roslyn Sellars, Maureen Foster, Amy Lueders, Lois Wellman, Joy Nicholopoulos, sherry_barrett@fws.gov, Tasha Robbins, Jason Larrabee, Thomas Irwin, Stacey Garcia
Description:
Meeting rescheduled, per Todd Willens via Cathy Gulac. Coordination made via Roslyn Sellars and Thomas Garcia phone conversation*// Please forward any briefing materials (if applicable). Greg Sheehan Gary Frazer Amy Lueders, Regional Director in Albuquerque (via phone) Joy Nicholopoulos, Deputy Regional Director in Albuquerque (via phone)//

11am - 11:30am peg

Video call: [REDACTED]
Calendar: Gary Frazer

11:30am - 12pm Pesticide Follow-up

Video call: [REDACTED]
Where: [REDACTED] Passcode [REDACTED]
Calendar: Gary Frazer
Created by: Lois Wellman
Who: Gary Frazer, Craig Aubrey, Nancy Brown-Kobil, George Noguchi, Rebecca Finley, Gina Shultz, Benjamin Jesup, Nancy Golden

11:30am - 12pm Weekly Directorate VTC: Transition Check-In--Room 3038

Calendar: David Hoskins
Created by: Gary Frazer
Who:
Henry Schlitzer, Greg Sheehan, Gary Frazer, Mario Flemate, Michael Gale, Casey Hammond, FWS Directorate & Deputies, Edward Grace, pamelamichalegko@fws.gov, Kashif Askari, Wanda Cantrell, Brian Bloodsworth, Denise Thompson, Jim Kurth, Clayton McBride, Janine Velasco
Description:
----- Telephone Participants: Please use Vidyo Desktop to connect if possible. Otherwise, dial [REDACTED] and select room number [REDACTED] VTC participants dial the entire number listed, based on your time zone: MST / PST / HST: [REDACTED] EST / CST: [REDACTED] AST: [REDACTED] Vidyo Desktop participants connect to: Directorate's Vidyo Room Or, click this link: [REDACTED] If you should have any questions, please contact ifw-vidyosupport@fws.gov, or call 703-358-2450. -----

11:30am - 12pm Weekly Directorate VTC: Transition Check-In--Room 3038

Video call: [REDACTED]
Calendar: Kashif Askari
Who:
Greg Sheehan, Paul Souza, Mario Flemate, GMS-mike_edwards@fws.gov-01cdc809-fe30cf88.pst/paul_souza@fws.gov (Read Only), Janine Velasco, Brian Bloodsworth, Edward Grace, Henry Schlitzer, Gary Frazer, Casey Hammond, Wanda Cantrell, pamelamichalegko@fws.gov, Jim Kurth, Clayton McBride, Michael Gale, Kashif Askari, FWS Directorate & Deputies, David Hoskins, Denise Thompson
Description:
----- Telephone Participants: Please use Vidyo Desktop to connect if possible. Otherwise, dial [REDACTED] and select room number [REDACTED] VTC participants dial the entire number listed, based on your time zone: MST / PST / HST: [REDACTED] EST / CST: [REDACTED] AST: [REDACTED] Vidyo Desktop participants connect to: Directorate's Vidyo Room Or, click this link: [REDACTED] If you should have any questions, please contact ifw-vidyosupport@fws.gov, or call 703-358-2450. -----

Gary Frazer

Tue Oct 31, 2017

All day Halloween

Tue Oct 31, 2017

Where: United States

Calendar: Gary Frazer

4:30am - 4:45am Call kp

Video call

Calendar: Gary Frazer

5:30am - 6:30am Chief's Meeting - Skyline

Video call

Where: Hamilton Conference Room

Calendar: Gary Frazer

6:30am - 7am Craig Aubrey

Video call

Calendar: Gary Frazer

Created by: Lois Wellman

Who: Gary Frazer, Craig Aubrey, Ben Thatcher, John Morse, Gina Shultz

7:30am - 8am Peg -- text her on gov cell when available

Video call

Calendar: Gary Frazer

8am - 8:25am FWS - CA Spineflower with DAS/FWP

Video call

Where: Room 3144 | Call in:

Code:

Leader Code:

Calendar: Aurelia Skipwith

Created by: Thomas Garcia

Who: Thomas Irwin, Roslyn Sellars, Greg Sheehan, Thomas Garcia, Aurelia Skipwith, Michael Fris, Lois Wellman, Gary Frazer, Steve Henry

Description:

Update: Call in added, as requested by Gary Frazer On Wed, Oct 25, 2017 at 10:54 AM, Frazer, Gary wrote: Thomas --

This will be a phone briefing by our Regional and field office personnel that negotiated the conservation plan that Aurelia wants to learn about. So would you add a call in number and extend the invitation to Michael_Fris@fws.gov and Steve_Henry@fws.gov? Thanks -- GDF Gary Frazer Assistant Director --Ecological Service U.S. Fish and Wildlife Service (202) 208-4646 Coordination made via Thomas G/Roslyn. Please forward briefing materials to thomas_garcia@nps.gov prior to meeting. Thanks, TG Background: On Tue, Oct 24, 2017 at 3:28 PM, Sellars, Roslyn wrote: Our folks would like to schedule for 10/31 at 11am. Attendees from FWS are below. Mike Fris Steve Henry Gary Frazer Roslyn On Tue, Oct 24, 2017 at 2:54 PM, Garcia, Thomas wrote: Aurelia is on travel 10/26 & 10/27. The following is available next week: Monday, 10/30 - 10:00 am & 2:00 pm Tuesday, 10/31 - 11:00 am I've placed a hold on those timeslots for now. Please let me know what works. Thomas A. Garcia Executive Assistant Office of the Assistant Secretary for Fish and Wildlife and Parks Office: (202) 208-4416 Mobile: (202) 815-7964 On Tue, Oct 24, 2017 at 2:50 PM, Sellars, Roslyn wrote: Good afternoon, Is Aurelia available on 10/26 between 1:30 - 4p Eastern? Our regional office staff would like to brief her on California Spineflower. If the time slot requested does not work can we get her availability for other times that day or on 10/27? Details on the subject are in the emails below. Attendees from FWS are below. Mike Fris Steve Henry Gary Frazer Roslyn Sellars Executive Assistant Office of the Director | U.S. Fish and Wildlife Service 1849 C Street NW | Room 3356 | Washington, DC | (202) 208-4545 | roslyn_sellars@fws.gov Please copy Thomas Irwin (thomas_irwin@fws.gov) on future emails related to scheduling. ----- Forwarded message ----- From: Wanda Cantrell Date: Tue, Oct 24, 2017 at 2:11 PM Subject: FW: Phone conversation with Aurelia Skipwith on California Spineflower To: Roslyn Sellars, Lois Wellman, Thomas Irwin, Charisa Morris, Gina Shultz Cc: Steve Henry, Michael Fris, Jody Holzworth, April Evans Hello Mike Fris & Steve Henry are available on Thursday 10/26/17 PST 10:30am - 1:00pm. Please let me know if this date/time will work. Thank you Wanda From: Gary Frazer [mailto:gary_frazer@fws.gov] Sent: Monday, October 23, 2017 8:21 AM To: Gale, Michael Cc: Paul Souza; Jody Holzworth; Wanda Cantrell; Lois Wellman; Roslyn Sellars; Thomas Irwin; Charisa Morris; Gina Shultz Subject: Re: Phone conversation with Aurelia Skipwith on California Spineflower I'll sit in if I can, but don't schedule around me. -- GDF Sent from my iPhone On Oct 23, 2017, at 11:11 AM, Gale, Michael wrote: Hello Paul, Greg Sheehan wanted me to see if you or the subject matter expert in the Region could have a call with Deputy Assistant Secretary Aurelia Skipwith on the spineflower issue in California. PS-DPP

Your staff can work with Roslyn Sellars and Thomas Irwin on the scheduling piece. I've copied Gary Frazer for awareness and to see if he wants to participate in the conversation with Aurelia. Here's the issue at hand: PS-DPP

_____, who developed the CCA with FWS, the City of Calabasas and Santa Monica Mountains Conservancy (the listing petitioners), Wild Earth Guardians (MDL Settlement Agreement), the U.S. Army Corps of Engineers, and the State of California. Planned outreach includes congressional and stakeholder notifications and a local press release to Santa Barbara County media. Thanks, Michael -- Michael Gale Deputy Chief of Staff (Acting), Director's Office U.S. Fish and Wildlife Service 202.208.4923 (office) 571.982.2158 (cell)

Gary Frazer

8am - 10am Greg Sheehan's ESA Hearing Murder Board Meeting

Where: Room 3038

Calendar: Barbara Wainman

Created by: Gary Frazer

Who:

Dominic Maione, Greg Sheehan, Charisa Morris, Edward Grace, Lisa Jones, Casey Hammond, Craig Hoover, Matthew Huggler, Martin Kodis, Jim Kurth, Stephen Guertin, Micah Chambers, Gary Frazer

Description:

----- Forwarded message ----- From: Rushing, Anya Date: Thu, Jul 13, 2017 at 4:14 PM Subject: ESA Hearing Murder Board Meeting Invites To: Roslyn Sellars , "Irwin, Thomas"
Cc: "Morris, Charisa" Micah Chambers Dominic Maione Barbara Wainman Marty Kodis Matt Huggler Lisa Jones Gary Frazer Ed Grace Craig Hoover Steve Guertin Jim Kurth Charisa Morris Casey Hammond

8:30am - 10am October social event - ES Halloween Potluck Luncheon

Video call

Where: Sam Hamilton A&B

Calendar: FWHQ ES Calendar

Created by: Lois Wellman

Who:

Rachel London, Valerie Fellows, Jonathan Phinney, FWHQ ES Calendar, Jane Harner, Katie Niemi, Victoria Foster, Keith Paul, Kelly Niland, Christina Kravitz, Ellen VanGelder, Jennifer Thompson, Andrew Raabe, Trish Adams, Karen Myers, Jennifer Neely, Brenda Bryant, Ben Thatcher, Colleen Fahey, Sonjia Harris, Lois Wellman, Debby Crouse, Catherine Liller, janine_vannorman@fws.gov, Jason Miller, Sara Pollack, Teresa Fish, Daniel Elbert, Andy Devolder, Sue Ellis, Parks Gilbert, charles_williams@fws.gov, Natchanon Ketram, Caitlin Snyder, Don Morgan, George Noguchi, Bridget Fahey, Steve Reagan, Kathryn Bissell, Chris Tanner, Carey Galst, Sarah Kilpatrick, Robert Barba, Sherry Skipper, Rosemary Burk, Mark Pavelka, John Morse, Nanc Green, John Swords, Karen Anderson, Jonathan Jaka, Robyn Blackburn, lewis_gorman@fws.gov, Stephanie Nash, George Schrader, Heather Bell, Rusty Griffin, Dana Wright, Gina Shultz, Richard Henry, Richard Gooch, Megan Kelhart, Frankie Green, kayla_miller@fws.gov, joyce_allen@fws.gov, Julie Moore, Eileen Harke, Jeffrey Herod, cheryl_amrani@fws.gov, Kristy Hatch, Madeline Prush, Beth Forbus, Steve Boateng, Nancy Golden, Megan Lang, Chun-Xue Ren, Kelly Hornaday, Dana Hartley, Gary Frazer, Sarah Quamme, Angela Okolie, Dorothy Herda, Jeff Newman, Martha BalisLarsen, Paul Comlish, Mitch Bergeson, Diane Bowen, Maricela Constantino, Christy JohnsonHughes, Patrice Ashfield, Tara Nicolaysen, Mark Abramovitz, Celecia Lee, Jennifer Servis, Holly Herod, ron_vandervort@fws.gov, david_harrelson@fws.gov, Barry Forsythe, Nic Huber, Jeanette Green, edward_keller@fws.gov, Amy Brisendine, Nathan Zorich, Janice Engle, Lisa Ellis, Ken Crabb, Leona Laniawe, Andrew Cruz, Craig Aubrey

Going? No

Description:

October is the month that the Branch of Conservation Strategy, Planning, and Communication hosts the monthly social event. So we're bringing our "A" Game! Please join us Tuesday, October 31st, 2017 for Ecological Services Halloween Party. We're having a potluck luncheon from 11:30-1:00 pm in the Sam Hamilton conference room and each division has been assigned a food group. Please bring your own beverage and let us know what type of dish you plan on bringing via this googlefile: https://docs.google.com/a/doi.gov/spreadsheets/d/1S92Dt2h_mAbhkjI2xcmfKkcEPkICEkUL03I37vKGfEl/edit?usp=sharing We'll play Halloween trivia while we eat. And, a costume or Halloween festive attire is encouraged (and rewarded too!) Potluck Luncheon: DBTS - Salads and Side Dishes DRR - Appetizers DCC - Main Dishes DERR - Desserts

10am - 12pm PFW/Coastal-Marine ARD VTC Meeting

Video call

Where: Murie Conference Room #3N057

Calendar: Azuredee Perkins

Who:

Samantha Brooke, jeff_rupert@fws.gov, marry_colligan@fws.gov, Polly Wheeler, Leopoldo Miranda, Rollee White, Robert Miller, Ted Koch, Katherine Spomer, Mark Cookson, Spencer Simon, Matthew Filsinger, Paul Phifer, Robin Heubel, Maureen Gallagher, Charles Blair, Shannon Smith, Gary Frazer, Shaun Sanchez, Lori Nordstrom, Azuredee Perkins, Gina Shultz, Dave Walker, Cynthia Martinez, Will Meeks, cynthia_barry@fws.gov

10am - 12pm PFW/Coastal-Marine ARD VTC Meeting

Video call

Where: Murie Conference Room #3N057

Calendar: Paul Phifer

Who:

Lori Nordstrom, Leopoldo Miranda, Spencer Simon, Dave Walker, Cynthia Martinez, Will Meeks, jeff_rupert@fws.gov, Shaun Sanchez, Shannon Smith, cynthia_barry@fws.gov, Mark Cookson, Charles Blair, Robin Heubel, Katherine Spomer, Gary Frazer, marry_colligan@fws.gov, Azuredee Perkins, Rollee White, Ted Koch, Polly Wheeler, Samantha Brooke, Robert Miller, Maureen Gallagher, Matthew Filsinger, Gina Shultz, Paul Phifer

Gary Frazer

11:30am - 1pm Meeting w/ YRBWEP YIP - IC & DOI Leadership

Video call: b5-CI

Where: North Penthouse; b5-CI PC: b5-CI Leader: b5-CI

Calendar: BOR WRO PNRRegionalLiaison

Created by: Christopher Keith

Who:

roylene.rides-at-the-door@wa.usda.gov, gteb461@ecy.wa.gov, cathy.tortorici@noaa.gov, Daniel DuBray, Jeanne Demorest, Andrea Travnicek, jmhiggins@fs.fed.us, David Palumbo, mbeberle@fs.fed.us, Mathew Maucieri, Dawn Wiedmeier, bferebee@fs.fed.us, Gwendolyn Christensen, weldon.loudermilk@bia.gov, Byron Loosle, Jennifer Carrington, donna.wieting@noaa.gov, James Hess, Bret Walters, Wendy McDermott, Alan Mikkelsen, dlearn@gtg.gov, ckearney@tfgnet.com, ycastellanos@tfgnet.com, Scott Cameron, Gary Frazer, zisrael@tfgnet.com, mike.black@bia.gov, perry.gayaldo@noaa.gov, carrie.selberg@noaa.gov, BOR WRO PNRRegionalLiaison, Lorri Gray, slbaskerville@bpa.gov, Robert Wolf, Michelle Mebane, csavage@fs.fed.us, pat.montanio@noaa.gov, Jeanette Coleman, gcasamassa@fs.fed.us, Bryan Rice, Helen Riggs, dwbergendorf@fs.fed.us, David Mabe, Melissa Smith, douglas.lords@bia.gov, faline.haven@bia.gov, Paul Souza, rfulkerson@usbr.gov, Ryan Nichols, tdykstra@tfgnet.com, Gina Shultz, steven.kopecky@usace.army.mil, Kerry Rae, McKinley Ben Miller, samuel.rauch@noaa.gov, David Hu, Joshua Mahan, cjswazywallace@fs.fed.us, Linda Swanson, Evann Rogers, Shirley Ryan, jennifer.lukens@noaa.gov, Patrick Joos, Patricia Aaron, Michael Black, astor.boozier@wdc.usda.gov, Bodie Shaw, george@georgewaters.com, Teresa Hauser, Richard Visser, Bryan Rice, Deborah Lawler

Description:

Meeting Location: Main Interior Bldg 1849 C Street NW., WDC ROOM: North Penthouse Yakima Basin Integrated Plan Implementation Committee meeting with the DC Leadership Group. Please add anyone that I have missed and/or will be attending instead of someone else. Contact for Security (people will be at entrances to help guests get to room): Chris Keith North Penthouse meeting 202-513-0671 Participants should enter Main Interior Building via the (South) C Street Entrance, take first set of elevators to 7th floor and then walk to North (E Street) side of building, and use "Stair 52" or North Penthouse elevator both located near 7500 wing of the building. Please arrive at least 15-20 minutes early to allow time for security and getting to room. We will do our best to help people get to meeting room. Thank you.

12:45pm - 1pm Meeting Gary Frazer

Video call: b5-CI

Where: Room 6114

Calendar: David Bernhardt

Created by: Gareth Rees

Who: Todd Willens, Gary Frazer, David Bernhardt

1pm - 2pm DOI Operations Meeting - AS/FWP

Video call: b5-CI

Where: Room 6120 - - Call-in b5-CI Code b5-CI

Calendar: Gary Frazer

Description: Leader Code b5-CI Attendees: Acting AS DAS Chief of Staff Acting Bureau Director Deputy Directors

Wed Nov 1, 2017

8am - 8:30am FWS Package Briefing

Video call: b5-CI

Where: Conference Room 3144

Calendar: Gary Frazer

Created by: Lois Wellman

Who: Roslyn Sellars, Aurelia Skipwith, Bivan Patnaik, Maureen Foster, Megan Appar, Gary Frazer, Thomas Irwin, Greg Sheehan, Tasha Robbins, Jason Larrabee

Description: Other AD participants will be notified weekly once packages are identified from their program.

10am - 10:45am Update Briefing with FWS

Video call: b5-CI

Where: 6120 - Call-in b5-CI Participant Code b5-CI (Leader Code b5-CI)

Calendar: David Bernhardt

Created by: Gareth Rees

Who:

Roslyn Sellars, Greg Sheehan, Todd Willens, Nancy Brown-Kobil, Benjamin Jesup, Mariagrazia Caminiti, Peg Romanik, Gary Frazer, Richard Goeken, David Bernhardt, Thomas Irwin, Gareth Rees

Thu Nov 2, 2017

3:45am - 4:45am b6-Personal Privacy

Video call: b5-CI

Where: b6-Personal Privacy

Calendar: Gary Frazer

Description: Conf code b5-CI



FULL COMMUNICATIONS STRATEGY FOR HIGH-PROFILE OR CONTROVERSIAL ANNOUNCEMENTS



SECTION I: GENERAL INFORMATION

1. **Plan title** National Pesticide Draft Biological Opinions on Chlorpyrifos, Malathion and Diazanone
2. **DTS number** 066537
3. **What is the action triggering this communications plan?** *(Please explain in no more than three sentences. Additional background information may be included in the appendix)*

The Service will be transmitting to the Environmental Protection Agency (EPA) our draft biological opinions on the effects of three pesticides (chlorpyrifos, diazinon and malathion) on all Endangered Species Act (ESA) candidate, proposed and listed species, and all proposed and designated critical habitats in the U.S. and its territories. By transmitting these biological opinions to the EPA, we are meeting our obligations under section 7 of the ESA for the re-registration of the three pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

4. **What is the proposed date for this action? Why has it been selected? Is it flexible?**

The Service is under a court-ordered settlement agreement to finalize its consultations on these three pesticides by December 31, 2017. This deadline was jointly agreed upon by the Center for Biological Diversity (CBD), EPA and the Service. We are seeking to transmit the draft biological opinions to the EPA by mid- to late October 2017. The EPA will release the draft biological opinions for a 60-day comment period before they are finalized.

5. **Which office is leading this communications effort and which other programs, regions or groups are involved?**

External Affairs in Headquarters office will lead this communications effort, in close collaboration with Ecological Services. We will coordinate with EPA on timing and messaging, and share outreach with all FWS regions, given that species and critical habitats in every region are involved.

NOAA-NMFS is submitting separate BiOps to EPA on the same pesticides. As such, we will coordinate with their EA office on this action.

SECTION II: GOALS


- 6. What is our ultimate goal here beyond simply informing people of this action?** *(How do we want audiences to regard the Service as a result of this action?)*

We want target audiences to regard the Service as not only having fully met its ESA consultation requirements through this action, but that our draft findings are entirely based on science. We want target audiences to fully understand this action and what jeopardy and adverse modification findings mean and that adverse effects to every listed species and critical habitat can be minimized.

Finally, we want target audiences to understand that we are committed to working with industry and stakeholders to protect America's imperiled wildlife while helping industry and landowners avoid jeopardizing listed species and destroying or adversely modifying critical habitats. Importantly, every jeopardy and adverse modification finding can be avoided through Reasonable and Prudent Alternatives between now and the final biological opinions.

- 7. What story do we want to tell?** *(What should audiences understand, appreciate or connect with emotionally?)*

The Service remains committed to working with diverse partners to conserve America's imperiled wildlife based on science. b5-DP



SECTION III: ASSESSING STAKEHOLDER INTEREST AND POSITION

8. **External audiences** *(Please name up to five target audiences to inform the messages, tactics and stakeholder contact lists below. Be as specific as possible. Only list media if there are issue-specific outlets that merit targeting. General “media” and “the public” should not be used)*

Partner agencies, including EPA, NMFS, USDA
Agricultural groups and pesticide users
Pesticide registrants
Members of Congress
Conservation groups and petitioners, including CBD and Xerces Society

9. **Internal audiences** *(Please note any audiences within the Fish and Wildlife Service or Department of the Interior)*

Regional External Affairs offices, HQ Ecological Services

10. **Which groups or individuals may publicly oppose this action? What are their primary concerns?** *(This may include any or all of those described in Target Audiences and/or additional ones. Write “none” if no opposition is expected)*

Pesticide manufacturers, registrants, agriculture groups, farmers/ranchers – may oppose the findings as overly conservative and burdensome restrictions that will prevent them from using pesticides and hurt their bottom lines. May also take issue with science and methodology of the biological opinions.

USDA – may oppose our biological opinions on grounds that they do not represent best available or robust science. (USDA has already make these arguments internally and has avoided engaging the Service throughout much of consultation process.)

EPA – may argue that our biological opinions are not based upon the best available science.

Members of congress, especially in agriculture districts – they will likely hear from industry and agricultural constituencies that restrictions are unfair, overly burdensome and harmful to agricultural production.

11. What stakeholder groups or third-party validators might be leveraged for a statement, quote or other supportive action?

The Service should contact Defender of Wildlife, to see if they have recommendations regarding which pesticide registrants and other stakeholders would be most appropriate to give a statement.

SECTION IV: KEY MESSAGES

12. What are our topline, big picture messages? *(These should be top concepts that readers should take away, including an understanding of why this action matters and why they should care, not a list of facts, which should be placed in the appendix. List no more than three!)*

The Service has completed three draft biological opinions, analyzing the effects, of three pesticides (chlorpyrifos, diazinon and malathion) on all ESA-listed, and proposed, and candidate species (1,653 species) and designated and proposed critical habitats. (These are the first such national consultations on pesticides for all ESA-listed species and critical habitats of their kind.)

b5-DP



Importantly, jeopardy and destruction or adverse modification can be avoided through reasonable modifications to how and where the three pesticides are used. We will work with registrants, industry, pesticide users, and others in the coming months to develop measures that allow for the responsible use of these chemicals in a manner that avoids jeopardy and destruction or adverse modification of species and critical habitats.

See appendix for definitions of all terms and concepts.

13. What secondary messages are there? *(Again, these are messages, not facts. Divide these by audience if appropriate)*

The findings are based on usage of each pesticide as defined by its label. For pesticides registered for use in the U.S. with EPA, the label is the law.

With the transmittal of the draft biological opinions to the EPA, we anticipate that EPA will request public comment on the draft biological opinions for 60 days. During this time, we will work with pesticide registrants, agricultural groups, Federal agencies and conservation groups to refine our effects analyses and identify measures to minimize impacts and avoid jeopardy and destruction or adverse modification determinations.

Examples of measures for avoiding jeopardy and minimizing impacts include restricting pesticide usage in localized areas; clarifying and revising label-language to eliminate areas where pesticides are not anticipated to be used (such as areas of high elevation and deserts); establishing or increasing buffers to reduce spray drift into areas where listed species may occur; improving pesticide application equipment.

See appendix for additional messaging, background and table of all jeopardy and adverse modification findings each pesticide.

SECTION V: IMPLEMENTATION

14. What is the overarching plan for reaching specified audiences with our key messages?

(Explain the strategic approach and list key tactics)

The outreach strategies for this action are still under consideration. We will closely coordinate with EPA and NOAA-NMFS on both messaging and strategies, which will likely include one of the following:

1. **Joint proactive:** Issue a joint news release with EPA (and possibly NMFS) when EPA posts the biological opinions and opens the comment period.
2. **Service-only:** Issue a solo Service news release. If EPA decides to issue a news release as well, coordinate on timing and messaging.
3. **Hybrid:** Provide a notification on our website but do not put out a news release. Prepare and use if-asked only talking points for incoming inquiries.
4. **Reactive only:** No web posting, prepare and use if-asked only talking points.

Media and stakeholder webinar? Could go a long way to clarifying for all involved exactly what the draft biops, jeopardy findings and discussion over RPAs/RMAs are and are not, helping ensure informed public discourse.

Commented [AC1]: Gina, I left this one for u.

- 15. How will internal audiences be informed and engaged?** *(Be specific! External communications plans will not be approved unless internal communications are adequately addressed)*

TBD

- 16. Which communications tools are needed to support these strategies and tactics?** *(Be as specific as possible about the products identified and who will produce them)*

Tool	Responsible	Due Date
TBD		

- 17. Implementation timeline** *(If not known, put TBD or the number of days/hours before/after the announcement)*

Date and Time	Tactic	Responsible
All times are in the time zone		
Afternoon before transmittal	Notify members of congress and other VIP stakeholders, including EPA, NMFS and USDA	EA-Haussman, EA-Partners,
Mid to late October 2017?	Transmit biological opinions consultation to EPA.	HQ ES
Mid-November?	ANY OUTREACH SHOULD TIE TO EPA POSTING OF DOCKET NOT FWS TRANSMITTAL OF BIOPS	HQ ES/HQ EA

Day of transmittal	News release or bulletin to media and stakeholders?	HQ EA-Hires
Day of Transmittal	Congressional notification to key committee staff	HQ-CLA Hausman
Days following transmittal	Offer Congressional briefing for key committee staff (in conjunction with EPA, USDA, and NMFS)	HQ-CLA Hausman

Commented [AC2]: Is this actually the date EPA posts to docket?

18. VIP Call List (Who needs to be called in person by a senior staff member and who will that senior staff member be? Note: not all plans will require such in-person calls)

EPA - Marietta Echeverria
 USDA – Sheryl Kunickis
 NOAA-NMFS - Cathy Tortorici

19. Stakeholder contacts (For each, paste in a table that provides organization name, contact person, contact information as appropriate, and the name of the person responsible for making contact)

Internal

--

External Pro

--

External Neutral

<u>Organization:</u>	<u>Name:</u>	<u>Email:</u>	<u>Contacted by:</u>
American Bird Conservancy	Steve Holmer Cynthia Palmer	[REDACTED]	DPIA
Association of Fish & Wildlife Agencies	Jen Mock-Schaeffer	[REDACTED]ife.org	DPIA
American Fisheries	Tom Bigford	[REDACTED]	DPIA

House Agriculture Committee – Majority	[REDACTED]	
House Agriculture Committee – Minority	[REDACTED].gov;	

SECTION VI: SOCIAL MEDIA PLAN

- 21. How will social media be used to help in messaging to target audiences and achieve communications goals?**

N/A

SECTION VII: PRIMARY POINTS OF CONTACT

- 22. Media coordinators** *(For national-level plans, list at least one person from HQ Public Affairs and others from region/program if appropriate. For regional-level plans, only regional coordinators are required. Enter name, email and phone)*

Public Affairs, FWS HQ, Brian Hires, [REDACTED]

- 23. Congressional coordinators** *(For national-level plans, list at least one person from HQ Public Affairs and others from region/program if appropriate. For regional-level plans, only regional coordinators are required. Enter name, email and phone)*

Alyssa Hausman, HQ CLA, [REDACTED]

- 24. Social media coordinators** *(Enter name, email and phone)*

N/A

25. Program communications POCs *(Enter name, email and phone)*

Gina Shultz, [REDACTED]

Subject matter experts available for interview *(Must be approved by HQ Public Affairs for an HQ-led announcement or by Regional Public Affairs for region-led announcement. Enter name, email and phone)*

Gina Shultz, [REDACTED]

27. Additional technical experts for reference *(Enter name, email and phone)*

Gina Shultz, [REDACTED]

28. Are there any non-FWS points of contact for this action? *(Enter name, organization, role, email and phone)*

SECTION VIII: DOCUMENT INFO

29. Created by **Date created**

Brian Hires	8/31/2017
-------------	-----------

30. Edited by **Date edited**

Gavin Shire	9/8/17
Alyssa Hausman	9/14/17
D.L. Hobbs	09/20/2017
Craig Aubrey	10/10/2017

APPENDIX: ADDITIONAL BACKGROUND INFORMATION AND MATERIALS

DO NOT PUT OTHER MATERIALS SUCH AS FAQs, NEWS RELEASE OR TALKING POINTS IN THIS SECTION. KEEP THOSE AS SEPARATE DOCUMENTS.

(Consider the following: What is the historical context? Does this relate to other issues that may not immediately be apparent (consider other programs and regions)? Is there a scientific basis to this issue? If so what is it?)

The Service will work with registrants to identify labeling and use modifications such as:

- Modify pesticide use for more localized applications
- Clarify pesticide use areas by eliminating places not sprayed, such as high elevation, desert ecosystems, etc.
- Increase buffers to reduce spray drift
- Equipment improvements
- No spray zones for highly endangered and endemic species
- Clarify adulticide (pesticide uses targeting adult mosquitos) and wide area use areas
- create partnerships for maintaining or increasing natural areas near agriculture
- Work with Industry to set up some field monitoring and collection of usage data

Primary Use and Effects of Three Insecticides Studied

Chlorpyrifos

- USES – Agricultural crops, orchards and vineyards, pasture, managed forests, and non-agricultural uses including right of ways and developed areas (e.g. public parks, golf courses). Also used, with no geographic and few temporal restrictions for, adult mosquito control and wide area use as ant bait and foliar spray. Other uses: cattle ear tags, seed treatment, granular formation, bait
- EFFECTS –
 - High overlap between chlorpyrifos use sites and species' ranges.
 - Can result in mortality, sublethal effects and/or indirect adverse effects to listed, proposed and candidate species.
 - Can remain in the environment for weeks to months after application, resulting in continuing effects after application

Malathion

- USES - Various agricultural and non-agricultural uses including crops, orchards and vineyards, pasture, and developed areas (e.g. residential, public parks). Can be purchased by the public for home use. Used for adult mosquito control with no geographic restrictions.
- EFFECTS –
 - High overlap between malathion use sites and species' ranges. Can result in mortality, sublethal effects and/or indirect adverse effects to listed, proposed and

candidate species.

- For all taxa, exposure to malathion could result in indirect effects to prey resources, particularly for species that consume invertebrates.
- Similarly, listed plants would experience indirect effects from loss of pollinators.
- For mosquito adulticide, high mortality to invertebrates over 100% of range based on lack of label restrictions. For other taxa, direct effects were more limited, but indirect effects for insectivorous species expected.
- Can remain in the environment up to a month after application, resulting in continuing effects to species post application.

Diazinon

USES - Due to risk to human health and the environment, use of diazinon was severely restricted in 2004. Remaining uses are limited to select crops, orchards, vineyards and nurseries. Can also be used in cattle ear tags.

EFFECTS -

- Compared to the other two pesticides, less overlap between diazinon use sites and species' ranges
- High toxicity for all taxa. In general, regardless of use site, exposure from diazinon to listed animal species often resulted in mortality and indirect effects to food sources.
- Similarly, listed plants would experience indirect effects from loss of pollinators.
- Due to high toxicity, effects predicted from spray drift onto adjacent use sites for many terrestrial species.
- Can remain in the environment for weeks to months after application, resulting in potential effects to species post application

Effects of Three Pesticides on Plants

- Most significant impact on plants is the indirect loss of pollinators. (The vast majority of listed plants are pollinated by insects.)
- Substantial overlap for chlorpyrifos and malathion uses, especially 100% overlap for adulticide and wide area use
- b5-DP [REDACTED]

Summary of Draft Biological Opinion Conclusions for Three Pesticides

	Species			Critical Habitat		
	Jeopardy	No Jeopardy	NLAA*	Ad Mod	No Ad Mod	NLAA*
Chlorpyrifos						
Malathion						
Diazinon						

* Not Likely to Adversely Affect

DEFINITION OF TERMS AND CONCEPTS

Jeopardize the continued existence of means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

Reasonable and prudent alternatives - recommended alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species or the destruction or adverse modification of designated critical

habitat. [50 CFR §402.02]

Reasonable and prudent measures - actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take. [50 CFR §402.02]

From: [Aubrey, Craig](#)
To: [Kathryn Bissell](#); [Keith Paul](#); [Nancy Golden](#)
Subject: Fwd: Pesticides
Date: Wednesday, October 11, 2017 12:03:05 PM
Attachments: [20171006_pesticide_consultation_update.docx](#)
[National Pesticide Consultation briefing for DepSec 10.6.17.pptx](#)
[Combined letters to Sec. Ross, Sec. Zinke, and Admin. Pruitt with enclosures 4-13-17.pdf](#)

----- Forwarded message -----

From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Sun, Oct 8, 2017 at 9:47 PM
Subject: Fwd: Pesticides
To: Gina Shultz <Gina_Shultz@fws.gov>, Craig Aubrey <craig_aubrey@fws.gov>, Patrice Ashfield <patrice_ashfield@fws.gov>

I revised the ppt and white paper, so be sure to use this version for our briefing on Wed. We'll just work off of hard copies.

I'm afraid we're going to need to keep our delegation small. I'm inclined to have it be just me and Gina. We can confirm when Gina gets back on Wednesday. (Welcome back!) -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

----- Forwarded message -----

From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Sun, Oct 8, 2017 at 9:32 PM
Subject: Re: Pesticides
To: David Bernhardt <b6-Personal Privacy>
Cc: DOI <todd_willens@ios.doi.gov>, Greg Sheehan <greg_j_sheehan@fws.gov>, Gareth Rees <gareth_rees@ios.doi.gov>, Richard Goeken <richard.goeken@sol.doi.gov>, Peg Romanik <Peg.Romanik@sol.doi.gov>

David -- Attached is a white paper providing the litigation context for this consultation and a powerpoint describing the action, methods and preliminary findings.

Also attached is a letter from various affected industry parties that requests that the consultation be terminated. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

From: [Ziewitz, Jerry](#)
To: [Ashfield, Patrice](#)
Cc: [Daniel Brown](#); [Delfinia Montano](#); [Doug Lave](#); [Drew Crane](#); [Ellen McBride](#); [Glenn Smith](#); [John Morse](#); [Larry Salata](#); [Michelle Durlinger](#); [Phil Delphey](#); [Andrew Raabe](#)
Subject: Re: Pest Update and Question on Population Modeling
Date: Tuesday, October 17, 2017 11:33:36 AM

Patrice,

My advice about dealing with EPA's concern about population models is to focus on the purpose of consultation. A BO compiles information that compares the status of a species (numbers, reproduction, distribution, conservation needs/threats) with and without a proposed action to determine compliance with 7a2. Our formulation of that information *IS* a model of the species' populations at the scale of its endangered/threatened classification that estimates how an action will change them, and how it will change the species' prospects for recovery. We use this model to support a determination relative to the jeopardy definition.

When a mathematical model of a species' population dynamics is available, it does not necessarily represent the best data or tool available for accomplishing the purpose of a consultation, depending on how well it estimates the amount or extent of a species' responses upon exposure to action-caused stressors. A BO should explain why we are or are not using an available model.

Use of mathematical population models in R4 BOs is rare. I wrote one BO years ago that relied heavily on a model for a listed mussel, and I've recently reviewed one that is not yet signed that used a model for the Great Lakes population of the piping plover. Let me know if you want these, but my advise is to focus on the purpose of consultation in your response to EPA's comments. Look at the available models. If they are best available data in this consultation context, we should use them. If they are not, we should explain why.

Hope this helps.

Jerry Ziewitz
Endangered Species Act Consultation Coordinator
Southeast Region, USFWS
10210 Miccosukee Road
Tallahassee, FL 32309
850-877-6513
jerry_ziewitz@fws.gov

On Tue, Oct 17, 2017 at 9:08 AM, Ashfield, Patrice <patrice_ashfield@fws.gov> wrote:

Hey Guys-

I was hoping to give you all a Pest update(s) on the 7 call(s), but alas, seems we have had trouble rescheduling our standing meeting. Hopefully we have a time set now, but bottom line, and drum roll please, we have completed 3 **draft** BOs addressing the effects of the action to 1,623 species and 744 CH. We have briefed EPA management, FWS solicitors, and our upper management on our process and conclusions. The Chlor BO is currently in solicitor review. The Pest team really poured their blood, sweat, and tears into getting these drafts completed and they did an outstanding job! I think we are still kind of shell-shocked that we really did it (the last 6 months is a blur)!!

Right now we are working on some issues raised by EPA during our briefing. EPA is concerned that we did not incorporate any population modeling into our effects analysis. The following bullet expresses their concern:

"Population models are available in the literature for several listed species. No attempts were made to discuss available population models or to incorporate them into the best available information for a given species."

My questions for you are:

- 1) How many BOs would you estimate FWS has completed using population models to assist with the analysis in your Region?
- 2) If some of your folks did use a population model, can you send the BOs to me and Andy Raabe so we can see how a model was used?
- 3) What are your thoughts on incorporating population modeling into our effects analysis? We are not seeing the advantage, and we are very concerned that we don't have enough species specific information to be comfortable in the model input/output (or at least we don't have the species specific info here at HQ, Field Offices may?). So, any thoughts on population modeling and the pros/cons for use in consultations would be appreciated.

So, as always, I appreciate any thoughts or advice you may have on this issue. This issue has been discussed with NMFS and EPA (on several occasions) and so far we do not agree on the utility and benefit of pop models in these pesticide consultations, but I'd love your thoughts as well.

Thanks guys!

Patrice M. Ashfield
Branch Chief for National Consultations
Headquarters, Fish and Wildlife Service
5275 Leesburg Pike, MS:ES
Falls Church, VA 22041
(703) 358-2478 office

From: Frazer, Gary
To: Richard Goeken
Cc: Peg Romanik; BENJAMIN JESUP
Subject: Fwd: Pest
Date: Wednesday, November 1, 2017 9:15:30 AM
Attachments: Request for additional info v2.docx

Rick -- Attached are the talking points that we put together for David to in his last interagency discussion. b5-DP, b5-ACC

-- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

----- Forwarded message -----

From: **Frazer, Gary** <gary_frazer@fws.gov>
Date: Fri, Oct 27, 2017 at 4:17 PM
Subject: Re: Pest
To: "Shultz, Gina" <gina_shultz@fws.gov>, Craig Aubrey <craig_aubrey@fws.gov>, "Finley, Rebecca" <shawn.finley@sol.doi.gov>, Nancy Brown-Kobil <Nancy.Brown-Kobil@sol.doi.gov>
Cc: Nancy Golden <nancy_golden@fws.gov>

Good discussion with David, and he said that he found this be "incredibly helpful". b5-DP, b5-ACC

Thanks for the good work b5-DP, b5-ACC. (Nancy -- Sorry, but I just noticed that I sent my revised version to Nancy Golden when I meant to send it to you. So many Nancys. Here it is again.)

Let's keep working to improve the current draft. b5-DP, b5-ACC

- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

On Fri, Oct 27, 2017 at 2:41 PM, Frazer, Gary <gary_frazer@fws.gov> wrote:
See attached. I'll call in a few minutes. -- GDF

Gary Frazer
Assistant Director -- Ecological Services

From: Aubrey, Craig
To: [Gary Frazer](#); [Ashfield, Patrice](#); [Gina Shultz](#)
Subject: National pesticide consult briefing materials
Date: Friday, October 6, 2017 11:15:50 AM
Attachments: [National Pesticide Consultation briefing for David Bernhart 10_6_17.pptx](#)
[20171006_pesticide consultation update ca.docx](#)

Gary, Patrice updated the ppt we shared with Greg to reflect the change you requested. She also merged a cpl of the slides on malathion and chlorpyrifos b/c they had redundancies.

We also updated the BP we shared with SOL earlier this summer on the pest litigation.

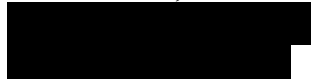
Let me know what else we can provide/change...

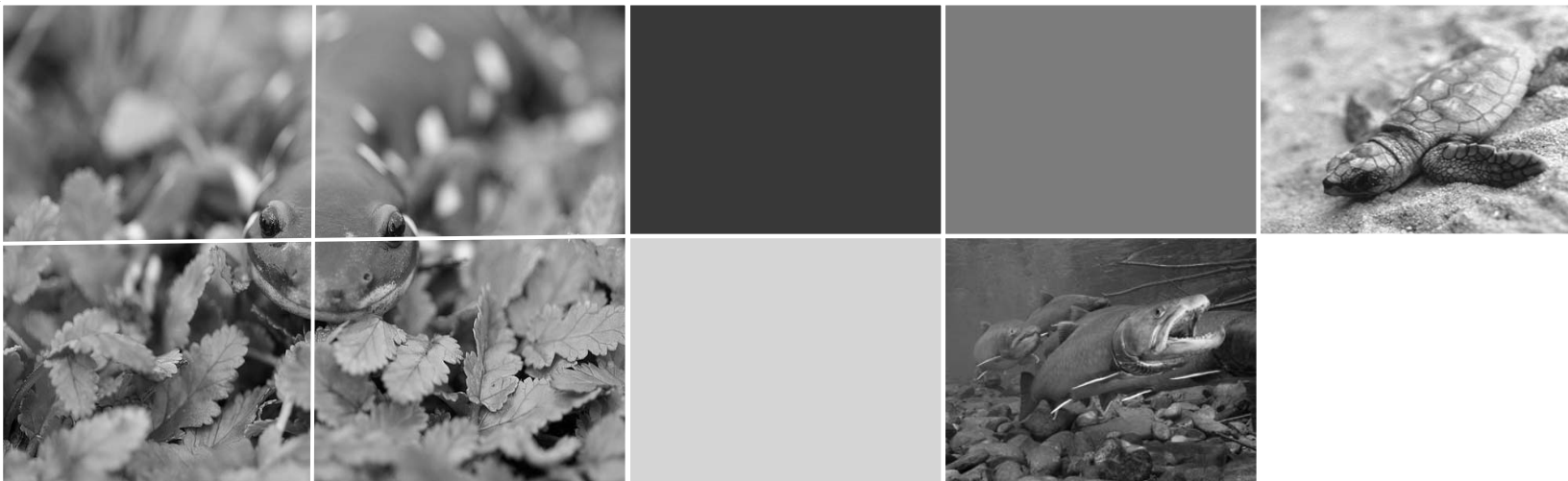
The briefing has been changed to Wednesday. I would like to get your thoughts on how we will proceed. Do u intend to give the briefing or should it be one of us? It will be Gina's 1st day back from vacation, so she will not have been able to prepare. Patrice is on leave, but wants to be able to attend (not currently on the invite - not sure if we're trying to not overwhelm the POLS with bureaucrats).

Thanks,

Craig

Craig W. Aubrey
Chief, Division of Environmental Review
Ecological Services Program
U.S. Fish and Wildlife Service Headquarters
Ecological Services, MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803





Overview of the National Pesticide Biological Opinions on Chlorpyrifos, Malathion and Diazinon

October, 2017

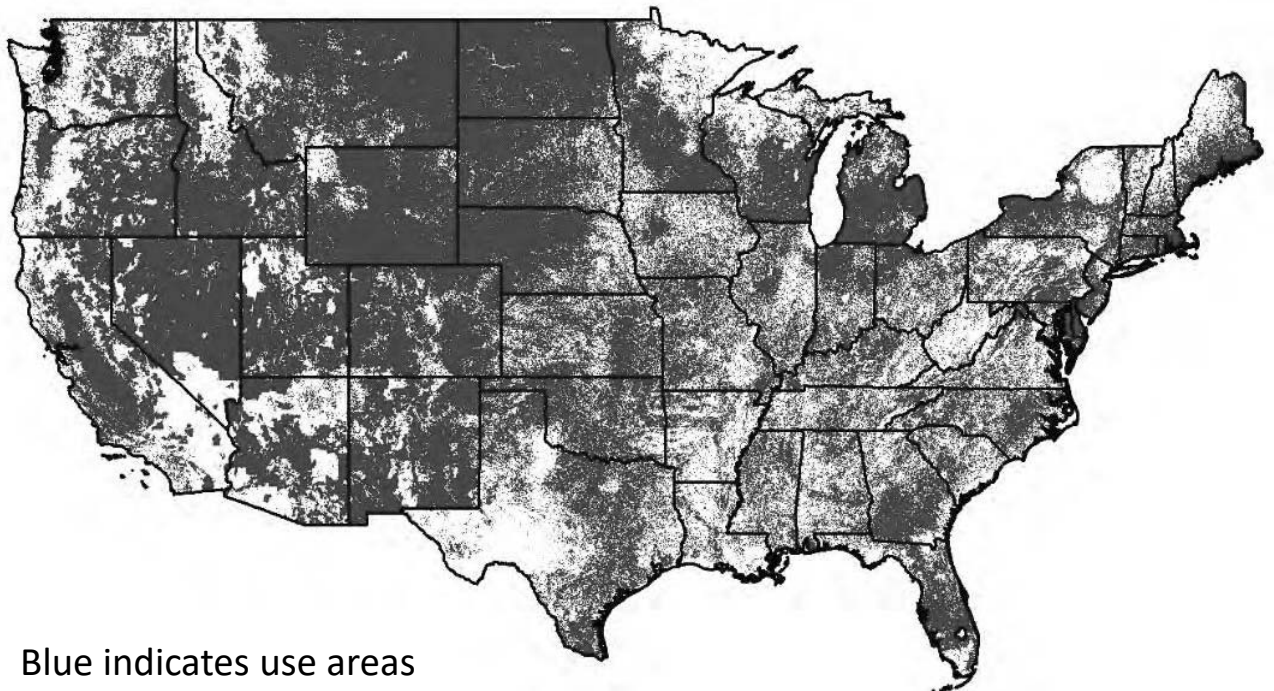




Chlorpyrifos, Diazinon and Malathion

- Broad spectrum insecticides (i.e., kill all insects)
- Organophosphates, work by inhibiting the enzyme acetylcholinesterase (AChE)
- All animals have this enzyme, so effects are not limited to target species
- Highly toxic across taxa
- Few limits on labels for when and where these pesticides can be used so exposure can be widespread (some restrictions for use near residential areas for human health concerns)
- These pesticides have been found far from sites of application, indicating transport via air

Diazinon Action Area - Labeled Uses



Action area for diazinon (this figure does not include the parts of the action area associated with Alaska, Hawaii, or the U.S. territories).





Biological Opinions – Our Approach

The proposed action is the registration of the labels “*the label is the law,*” and currently the labels allow for:

- multiple to numerous repeat applications seasonally or annually per use (e.g., mosquito adulticide up to biweekly throughout year)
- broad-scale use - geographic exclusions are extremely rare

For determining “may affect,” we assumed that if a species’ range overlapped with a pesticide use site, it would be exposed to that use (i.e., did not consider probability of use/probability of individuals encountering pesticide).

For many vulnerable species, a single exposure could be catastrophic (particularly narrow endemics). Repeated use (such as mosquito adulticide) could eliminate a segment of a population or an entire population in a given area.



Tools used for the Effects Analysis

We used two tools to estimate the magnitude of effects for species EPA had determined would be adversely affected by the re-registration of these chemicals. They combined the following information to predict the percent of the population affected:

1. toxicity data for a taxa group
2. predicted concentrations in the aquatic and terrestrial environments
3. percent overlap of pesticide use sites with the species range

MagTool - created by EPA. Used for all terrestrial species and a subset aquatic species.

R Plots - created by NMFS. Used for most aquatic species.



Island and Alaskan Species

Pesticide use site data for Alaska and the U.S. islands lack the spatial refinement for the overlap analysis we used for the lower 48, so the approach to the analysis was qualitative.

- Alaska = 5 species (1 plant, 3 birds, 1 mammal). All NLAA due to reduced overlap of use (less agriculture and adulticide) with species' ranges.
- Pacific Islands (includes Hawaii, Guam, CNMI) = 522 species
Mammals = 4; Birds = 32; Invertebrates = 45; Plants = 440
Assessments included label use, incorporating concerns such as many endemic species and few individuals.
- Puerto Rico (includes the Virgin Islands) = 72 species
Birds = 7 Invertebrates = 1 Herpifauna = 11 Plants = 53
As with the Pacific Islands, assessments based on allowable label uses and highly endemic, restricted species.



Critical Habitat Assessments

Steps for our assessment of the action to CH:

- 1) We reviewed the Primary Constituent Elements (PCE) or Physical and Biological Features (PBF) for every proposed and designated CH
- 2) We determined whether the PCE or PBF could be directly or indirectly effected due to the use of pesticides
- 3) If there was no direct or indirect link between the use of the pesticide and the PCE/PBF, we determined likely no destruction or adverse modification of critical habitat
- 4) If the PCE/PBF was directly or indirectly affected, then we looked at the percent overlap of the chemical use within the critical habitat. From there, we determined if destruction or adverse modification was likely based upon status of the habitat, percent overlap of the pesticide use, and causal link of the impact to the PCE/PBF.

Chemical Overview – Chlorpyrifos and Malathion

- Various agricultural and non-agricultural uses including: crops, orchards and vineyards, pasture, managed forests, right of ways, and developed areas (e.g. public parks, golf courses, home use).
- Also used for the following with no geographic and few temporal restrictions
 - mosquito adulticide control
 - wide area use (ant bait and foliar spray)
- Other uses: cattle ear tags, seed treatment, granular formation, bait
- Can remain in the environment for weeks to months after application, resulting in potential effects to species after application





Chlorpyrifos and Malathion - Effects

- High overlap between uses and species' ranges
- High toxicity for all animal taxa. In general, regardless of use site, exposure from chlorpyrifos and malathion to listed animal species could result in:
 - direct mortality (vertebrates and invertebrates)
 - impacts to growth, reproduction and behavior (vertebrates)
 - indirect effects to food sources
- Similarly, listed plants would experience indirect effects from loss of pollinators.
- For mosquito adulticide and wide area use applications, potential for direct and/or indirect effects to all species over 100% of range based on lack of label restrictions.



Chemical Overview – Diazinon

- Due to risk to human health and the environment, use of diazinon was severely restricted in 2004
- Remaining uses are limited to select crops, orchards, vineyards and nurseries
- Can also be used in cattle ear tags
- Can remain in the environment for weeks to months after application, resulting in potential effects to species post application

Diazinon - Effects

- Compared to the other two chemicals, less overlap between diazinon use and species' ranges
- High toxicity for all taxa. In general, regardless of use site, exposure from diazinon to listed animal species often resulted in mortality and indirect effects to food sources.
- Similarly, listed plants would experience indirect effects from loss of pollinators.
- Due to high toxicity, effects predicted from spray drift onto adjacent use sites for many terrestrial species





Draft Biological Opinion Conclusions

	Species			Critical Habitat		
	Jeopardy	No Jeopardy	NLAA	Ad Mod	No Ad Mod	NLAA
Chlorpyrifos	1399 (88%)	130 (8%)	56 (4%)	169 (23%)	562 (76%)	11 (1%)
Malathion	1284 (81%)	192 (12%)	108 (7%)	163 (22%)	546 (74%)	31 (4%)
Diazinon	175 (12%)	843 (57%)	473 (32%)	20 (3%)	267 (41%)	372 (56%)

Notes:

Does not include no effect call determinations or determinations for experimental populations.

Effects for Plants

Indirect effects to plants most significant – loss of pollinators

- Vast majority of listed plants are pollinated by insects
- Substantial overlap for chlorpyrifos and malathion uses, especially 100% overlap for adulticide and wide area use
- Many species have low resiliency, redundancy, and representation in addition to declining population trends
- These factors led to numerous jeopardy determinations for insect-pollinated plants for chlorpyrifos and malathion (less for diazinon)



Contra Costa Goldfields





Example: Birds

Cape Sable seaside sparrow - chlorpyrifos

Photo credit: Lori Oberhofer, NPS



Habitat specific (marl prairies) so able to eliminate most exposure on pesticide use sites such as orchards and vineyards and developed areas. Diet mainly aquatic and terrestrial invertebrates.

May be susceptible to exposure from contaminated invertebrates and direct dermal exposure:

- 6% mortality each year (1% from overlap with pasture, 5% from spray drift from all adjacent use sites)
- Decline in food resources (6%)
- From adulticide, there will be 20% mortality and 100% decline in food resources
- From wide area use, there will be 100% mortality and 100% decline in food resources

Draft Jeopardy



Example: Mammals

San Joaquin kit fox- Diazinon

Photo credit: USFWS



Occurs on fragmented grassland habitat surrounded by intensive agriculture. Diet consists of small mammals such as mice, kangaroo rats, squirrels and rabbits, as well as ground-nesting birds, insects, broadleaf plants, and grasses.

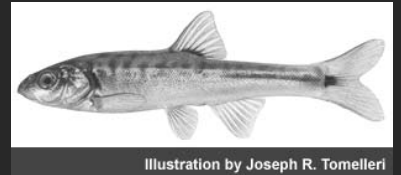
Susceptible to diazinon exposure from consumption of contaminated dietary items and direct dermal exposure.

- 10-13% mortality each year from consumption of contaminated arthropods, birds, grasses, leaves, and mammals
- Decline in food resources [mammals (2%), birds (16%), terrestrial invertebrates (16%)]
- Effects to growth, reproduction, behavior (16%)

Draft Jeopardy

Example: Fish

Moapa dace



If exposures to chlorpyrifos and malathion were to occur, there would be adverse effects to dace and their aquatic invertebrate prey. However, most of the species' range is on a Refuge and the Warm Springs Natural Area, both of which are managed in part for the dace. Therefore, we were able to eliminate most exposure from pesticide use sites in our analysis.

- Draft No Jeopardy for chlorpyrifos and malathion
 - Some adverse effects from drift and from exposure in the range outside of the protected areas
 - Buffers and other conservation measures related to pesticides are specified in the stewardship plan
 - Refuge manages for the dace
- Draft not likely to adversely affect for diazinon – the only overlap is cattle ear tag use (we considered the effect from ear tags discountable for the dace)



Path Forward

- We are coordinating with EPA to ensure they accept our analytical process and conclusions as scientifically sound.
- Transmit the draft biological opinions to EPA
- Work with EPA, NMFS, USDA, registrants, and grower groups to:
 1. refine our effects analyses between the draft and final biological opinions; and
 2. identify measures to avoid jeopardy and destruction or adverse modification determinations.



From: Frazer, Gary
To: [Gina Shultz](#); [Craig Aubrey](#); [Patrice Ashfield](#); [Richard Goeken](#); [Peg Romanik](#); [BENJAMIN JESUP](#); [Nancy Brown-Kobil](#); [Shawn Finley](#)
Subject: Re: Draft letter to EPA requesting more information
Date: Thursday, November 9, 2017 9:35:50 AM
Attachments: [request for more info from EPA AES edits clean DS edits.docx](#)

FYI only. Met with David this morning and discussed the revisions shown in the attached. I didn't find any to be problematic. He's going to share the revised draft within the interagency group that he's engaged with. Next steps will be informed by that discussion. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

On Wed, Nov 8, 2017 at 12:50 PM, Frazer, Gary <gary_frazer@fws.gov> wrote:
FYI. Just keeping you apprised of the status. -- GDF

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

----- Forwarded message -----

From: **Bernhardt, David** <[b6-Personal Privacy](#)>
Date: Wed, Nov 8, 2017 at 10:43 AM
Subject: Re: Draft letter to EPA requesting more information
To: "Frazer, Gary" <gary_frazer@fws.gov>

Gary: I have one sentence I wish to discuss with you tomorrow.

Thank you,
David
.


On Wed, Nov 8, 2017 at 9:58 AM, Frazer, Gary <gary_frazer@fws.gov> wrote:
David -- Attached is the draft letter to EPA. I made some changes to the draft that Rick shared yesterday, so I've attached both a clean version and one showing the changes from the draft I got from Rick.

I board a flight around 11a Eastern and land around 3p in the event you want to discuss. I'll be in the office tomorrow. -- GDF

Gary Frazer
Assistant Director -- Ecological Services

U.S. Fish and Wildlife Service
(202) 208-4646

--

David Longly Bernhardt
Deputy Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240


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DRAFT 11/7/2017

Marietta Echeverria
Director, Environmental Fate and Effects Division
Office of Pesticide Programs
Division Mail Code 7507P
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Dear Ms. Echeverria,

b5-ACC, b5-DP



b5-ACC & DP

please feel free to call me at 202-208-4646 or Deputy Assistant Director Gina Shultz at 703-358-1985.

Sincerely,

Gary Frazer
Assistant Director - Ecological Services

From: [Scott Hecht - NOAA Federal](#)
To: [George Noguchi](#); [Golden, Nancy](#)
Subject: Fwd: FWS Request for additional information letter
Date: Thursday, November 16, 2017 3:20:03 PM
Attachments: [Request for additional info regarding OP pesticide consultation 11142017.pdf](#)

b5-DPP

----- Forwarded message -----

From: Cathy Tortorici - NOAA Federal <cathy.tortorici@noaa.gov>
Date: Wed, Nov 15, 2017 at 10:42 AM
Subject: FWS Request for additional information letter
To: Scott Hecht <Scott.Hecht@noaa.gov>, Thomas Hooper - NOAA Federal <thomas.hooper@noaa.gov>, Tony Hawkes <tony.hawkes@noaa.gov>, Ryan DeWitt - NOAA Affiliate <ryan.dewitt@noaa.gov>, Cathy Laetz - NOAA Federal <cathy.laetz@noaa.gov>, David Baldwin - NOAA Federal <david.baldwin@noaa.gov>, Julann Spromberg - NOAA Affiliate <julann.spromberg@noaa.gov>

FYI - The FWS letter

----- Forwarded message -----

From: Frazer, Gary <gary_frazer@fws.gov>
Date: Tue, Nov 14, 2017 at 6:25 PM
Subject: Request for additional information
To: "Echeverria, Marietta" <echeverria.marietta@epa.gov>
Cc: Gina Shultz <Gina_Shultz@fws.gov>, Craig Aubrey <craig_aubrey@fws.gov>, Patrice Ashfield <patrice_ashfield@fws.gov>

Attached please find our request for additional information necessary to complete formal consultation on the effects of reregistering chlorpyrifos, malathion, and diazinon. A hard copy will follow.

We look forward to continuing our work together on this consultation process. Please contact me or Gina Shultz if you have any questions.

Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646

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Cathy Tortorici
Chief, ESA Interagency Cooperation Division
Office of Protected Resources
NOAA's National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
(w) 301.427.8495
(c) 301.602.2193



United States Department of the Interior

FISH AND WILDLIFE SERVICE



NOV 14 2017

Marietta Echeverria
Director, Environmental Fate and Effects Division
Office of Pesticide Programs
Division Mail Code 7507P
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, D.C. 20460

Dear Ms. Echeverria,

On January 18, 2017, the U.S. Fish and Wildlife Service (Service) received the Environmental Protection Agency's (EPA) draft Biological Evaluations (BEs) on the effects of reregistering chlorpyrifos, malathion, and diazinon under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and request to initiate formal consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA). As you are aware, this effort was one of the most complex section 7 consultations ever attempted. While we appreciate the collaboration with the Service and others that informed the development of these BEs, after further review and lessons learned in consideration of the BEs the Service is requesting additional information necessary to complete formal consultation. (See interagency consultation regulations at 50 CFR §402.14). Specifically, we request:

- A revised effects analysis for each chemical that reflects the best scientific and commercial data that is currently available or which can be obtained during the consultation – the standard for information required under 50 CFR §402.14(d) for an action agency when seeking formal consultation – regarding actual use, including extrapolation to areas where actual use data does not exist or cannot be obtained. The revised effect analyses should also seek to predict effects from future usage that is reasonably certain to occur during the time period of the label authorization but is not reflected in current actual use data.
- A revised effects analysis for each chemical that eliminates from analysis geographic areas identified by EPA where these pesticides are not used and where such use is not likely during the time period of the label authorization, or where listed species or designated critical habitats would not otherwise be exposed to use of the pesticide (e.g., certain states, high elevation areas, uninhabited islands).

In addition, the Service also suggests that the EPA monitor available use and usage information to determine if the manner of actual use remains consistent with assumptions of use and usage considered in the consultation process.

Under the regulations, indirect effects are “those that are caused by the proposed action and are later in time, but are reasonably certain to occur.” 50 C.F.R. 402.02. The effects analysis determines the action area, which is “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. 402.02. We must keep in mind the ESA regulations when considering the action description and effects analysis.

In the course of developing the draft and final biological opinions and associated incidental take statements, the Service requests that EPA facilitate coordination with the registrants and user groups to develop, if necessary, any reasonable and prudent alternatives to avoid violation of section 7(a)(2) of the Act and any reasonable and prudent measures necessary or appropriate to minimize the impact of your action on listed species.

This letter also serves as a request to extend the consultation, in accordance with 50 C.F.R. 402.14(e). Upon receipt of the above requested information, the Service will work with EPA to establish a schedule to complete consultation on the proposed actions.

If you have any questions or concerns about this request or the consultation process in general, please feel free to call me at 202-208-4646 or Deputy Assistant Director Gina Shultz at 703-358-1985.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Frazer', with a stylized flourish at the end.

Gary Frazer
Assistant Director - Ecological Services



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 17 2017

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

Mr. Gary Frazer
Assistant Director
U.S. Fish and Wildlife Service
Ecological Services
5275 Leesburg Pike
Falls Church, VA 22041-3803

Dear Mr. Frazer,

Thank you for your letter requesting additional information to complete formal consultation on the Biological Evaluations (BEs) for chlorpyrifos, malathion, and diazinon, which were finalized on January 18, 2017.

As you are aware, the BEs were developed with Services oversight and included all information and analyses as requested by the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) during their development. We understand, however, that in the course of our consultation, FWS has indicated that additional information regarding use and usage information could be of value in the development of the FWS biological opinions (BiOps). We will treat your letter as a request for additional information as described in section 402.14(f) of the FWS regulations and not a request to revise the EPA BEs with additional information under section 402.46(b). This is consistent with the regulations that require requests from FWS for additional information to be submitted within 45 days of EPA providing the BE to FWS (50 CFR Part 402). Accordingly, any agreement from EPA to supplement the consultation should not be viewed as EPA's agreement to either revise or withdraw its final BEs.

We are pleased that the utility of the use and usage information is being reconsidered, and we anticipate being able to provide this information within approximately 6 months.

Use information (e.g., maximum application rate, number of allowed applications, etc.) is extracted directly from product labels whereas usage information describes where, when, and how a pesticide is actually being used based on survey information. In order to provide the requested use and usage information, staff from EPA's Biological and Economic Analysis Division (BEAD) must compile and summarize label information, appropriately aggregate complex use directions, and develop associated usage statistics. The number of registered use sites for these active ingredients is extensive with more than 100 active registered products for

chlorpyrifos and diazinon. Additionally, this work would need to be completed concurrently with BEAD's existing workload to provide use and usage information supporting EPA's registration review program.

Your letter also requests to extend the consultation in accordance with 50 C.F.R.402.14(e). We agree that consultation should continue and be extended as necessary, and that any required consent from any applicants be obtained.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian J. Anderson". The signature is fluid and cursive, with the first name "Brian" and last name "Anderson" clearly distinguishable.

For Marietta Echeverria
Director, Environmental Fate and Effects Division
Office of Pesticide Programs

Biological Opinion for Pesticides: Chlorpyrifos, Diazinon, and Malathion

December 29, 2017

This document provides NMFS' opinion on EPA's registration of three chemicals - Chlorpyrifos, Diazinon, and Malathion – per a court ordered deadline.

NMFS provided the EPA with its final Biological Opinion addressing EPA's registration of three chemicals - Chlorpyrifos, Diazinon, and Malathion – per a court ordered deadline.

On November 9, 2017, per NMFS request and EPA's agreement, the Department of Justice requested a time extension with the court to complete our biological opinion on EPA's registration of chlorpyrifos, malathion, and diazinon. Sam Rauch, NMFS' Deputy Assistant Administrator for Regulatory Programs submitted a declaration describing the reasons for this time extension request.

Those reasons included concerns raised by EPA, FWS, and stakeholders regarding a variety of technical and methodological issues that will require lengthier and more intensive inter-agency collaborative work to address. Getting more time would have also allowed NMFS to engage with the public and stakeholders on a draft biological opinion prior to issuance of a final biological opinion, as originally planned and as recommended by the National Academies of Sciences.

Unfortunately, NMFS did not receive the requested extension and was required to transmit the biological opinion which, given the time, cannot fully account for the need to coordinate on a different process for developing such opinions or to fully engage the public.

NMFS recognizes that this biological opinion is only part of the extensive investments that EPA, FWS, and NMFS have made towards Endangered Species Act consultations.

Although NMFS has been required to issue this biological opinion sooner than desired, NMFS remains committed to working with EPA and FWS to improve the ESA section 7 consultation process.

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 7, Subchapter II of the United States Code is hereby revised as follows:

SECTION. 1. REGISTRATION OF PESTICIDES.

Section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c)(5) is hereby amended to read as follows:

“(5) Approval of registration—

“The Administrator shall register a pesticide if the Administrator determines that, when considered with any restrictions imposed under subsection (d) of this section

(A) its composition is such as to warrant the proposed claims for it;

(B) its labeling and other material required to be submitted comply with the requirements of this Act;

(C) it will perform its intended function without unreasonable adverse effects on the environment; and

(D) when used in accordance with widespread and commonly recognized practice, it will not generally cause unreasonable adverse effects on the environment; and

(E) when used in accordance with widespread and commonly recognized practice, it is not likely to jeopardize the survival of a federally listed threatened or endangered species or directly or indirectly alter, in a manner that is likely to appreciably diminish its value, critical habitat for both the survival and recovery of the listed species.”

New paragraphs (5A) and (5B) are hereby added to subsection 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c), immediately after paragraph (5), as follows:

“(5A) Principles to be applied in making the determinations required by Section 5(E).

“(A) In determining whether the criteria set forth in section 3(c)(5)(E) are met, the Administrator shall take into account the best scientific and commercial information and data

1 available, and shall consider all directions for use and restrictions on use specified by the
2 registration. The Administrator shall make this determination employing an economical and
3 effective screening process that includes higher-tiered probabilistic ecological risk assessments,
4 as appropriate. Notwithstanding any other provision of law, the Administrator shall not be
5 required to consult or otherwise communicate with the Secretaries of the Interior and Commerce
6 ("Secretaries") except to the extent specified in subsections 5A(B), (C) or (D).

7 "(B) The Administrator shall request that the Secretaries transmit their best available and
8 authoritative species information and data on federally listed threatened and endangered species'
9 location, life history, habitat needs, distribution, threats, population trends and conservation
10 needs, relevant physical and biological features of designated critical habitat not less than 30
11 days after the Administrator initiates the evaluation underlying the determination required by
12 subsection (5)(E). The Secretaries shall transmit this information and data to the Administrator
13 on a timely basis, unless the Secretaries have provided or made available their best available and
14 authoritative species information and data through a web-based platform that is updated
15 quarterly. No request for information pursuant to this subsection shall be considered or construed
16 to be a request for consultation under any other statute or subject to subsection (5A)(C) or (D) of
17 this Act. The failure of the Secretaries to provide their information or data to the Administrator
18 on a timely basis, as requested pursuant to this subsection, shall not constitute grounds for
19 extending any deadline for action established pursuant to Section 33(f) of this Act.

20 "(C) At the request of the registration applicant, the Administrator shall request
21 consultation with the Secretaries consistent with subsection (5A)(D).

22 "(D) In any consultation initiated pursuant to this subsection, the Administrator and the
23 Secretaries shall comply with the 'Joint Counterpart Endangered Species Act Section 7'
24 Consultation for regulatory actions under the Federal Insecticide, Fungicide and Rodenticide
25 Act' set forth at 50 C.F.R. part 402, Subpart D, as promulgated on September 7, 2004, or as
26 amended."

27 **"(5B) Essentiality and Efficacy.**

28 "The Administrator shall not make any lack of essentiality a criterion for denying
29 registration of any pesticide. Where two pesticides meet the requirements of section 3(c)(5) of

1 the Act, one should not be registered in preference to the other. In considering an application for
2 the registration of a pesticide, the Administrator may waive data requirements pertaining to
3 efficacy, in which event the Administrator may register the pesticide without determining that
4 the pesticide's composition is such as to warrant proposed claims of efficacy. If a pesticide is
5 found to be efficacious by any State under section 24(c) of this Act, 7 U.S.C. § 136v(c), a
6 presumption is established that the Administrator shall waive data requirements pertaining to
7 efficacy for use of the pesticide in such State."

8 **SEC. 2. APPLICABILITY OF 5(E) CRITERIA.**

9 Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136d(b) is
10 hereby amended to read as follows:

11 "(b) CANCELLATION AND CHANGE IN CLASSIFICATION. — If it appears to the
12 Administrator that a pesticide or its labeling or other material required to be submitted does not
13 comply with the provisions of this Act or, when used in accordance with widespread and
14 commonly recognized practice, generally causes unreasonable adverse effects on the
15 environment or does not meet the criteria of section 3(c)(5)(E) of this Act, the Administrator may
16 issue a notice of the Administrator's intent either

17 "(1) to cancel its registration or to change its classification together with the
18 reasons (including the factual basis) for the Administrator's action, or

19 "(2) to hold a hearing to determine whether or not its registration should be
20 canceled or its classification changed. Such notice shall be sent to the registrant and made
21 public. In determining whether to issue any such notice, the Administrator shall include
22 among those factors to be taken into account the impact of the action proposed in such
23 notice on production and prices of agricultural commodities, retail food prices, and
24 otherwise on the agricultural economy. At least 60 days prior to sending such notice to
25 the registrant or making public such notice, whichever occurs first, the Administrator
26 shall provide the Secretary of Agriculture with a copy of such notice and an analysis of
27 such impact on the agricultural economy. If the Secretary comments in writing to the
28 Administrator regarding the notice and analysis within 30 days after receiving them, the

1 Administrator shall publish in the Federal Register (with the notice) the comments of the
2 Secretary and the response of the Administrator with regard to the Secretary's comments.
3 If the Secretary does not comment in writing to the Administrator regarding the notice
4 and analysis within 30 days after receiving them, the Administrator may notify the
5 registrant and make public the notice at any time after such 30-day period
6 notwithstanding the foregoing 60-day time requirement. The time requirements imposed
7 by the preceding 3 sentences may be waived or modified to the extent agreed upon by the
8 Administrator and the Secretary. Notwithstanding any other provision of this subsection
9 (b) and section 25(d), in the event that the Administrator determines that suspension of a
10 pesticide registration is necessary to prevent an imminent hazard to human health, then
11 upon such a finding the Administrator may waive the requirement of notice to and
12 consultation with the Secretary of Agriculture pursuant to subsection (b) and of
13 submission to the Scientific Advisory Panel pursuant to section 25(d) and proceed in
14 accordance with subsection (c). When a public health use is affected, the Secretary of
15 Health and Human Services should provide available benefits and use information, or an
16 analysis thereof, in accordance with the procedures followed and subject to the same
17 conditions as the Secretary of Agriculture in the case of agricultural pesticides. The
18 proposed action shall become final and effective at the end of 30 days from receipt by the
19 registrant, or publication, of a notice issued under paragraph (1), whichever occurs later,
20 unless within that time either (i) the registrant makes the necessary corrections, if
21 possible, or (ii) a request for a hearing is made by a person adversely affected by the
22 notice. In the event a hearing is held pursuant to such a request or to the Administrator's
23 determination under paragraph (2), a decision pertaining to registration or classification
24 issued after completion of such hearing shall be final. In taking any final action under this
25 subsection, the Administrator shall consider restricting a pesticide's use or uses as an
26 alternative to cancellation and shall fully explain the reasons for these restrictions, and
27 shall include among those factors to be taken into account the impact of such final action
28 on production and prices of agricultural commodities, retail food prices, and otherwise on
29 the agricultural economy, and the Administrator shall publish in the Federal Register an
30 analysis of such impact."

1 **SEC. 3. IMPLEMENTATION OF THE ACT.**

2 ~~(a)~~ The standards for approval of registration of a pesticide, Section 3(c)(5) of the Federal
3 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c)(5) as amended, shall be in full
4 force and effect on October 1, ~~2019~~.

5 (b) Section 3(g)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
6 U.S.C. § 136a(g)(1)(A) is hereby amended by adding a new subsection (v) and renumbering
7 subsection (v) as (vi). Subsection (v) as amended shall read as follows:

8 ~~“(v)~~ ENSURING PROTECTION OF SPECIES AND HABITAT. – The Administrator
9 shall complete the determinations required by section 3(c)(5)(E) for an active ingredient
10 consistent with the periodic review of registrations in clauses (ii) and (iii) of this section and in
11 accordance with the following schedule:

12 (1) ~~not later than October 1, 2026~~, any active ingredient first registered on or
13 before October 1, 2007;

14 (2) not later than October 1, ~~2034~~, any active ingredient first registered after
15 October 1, 2007 but before the effective date of this amendment to the Act; and

16 (3) ~~not later than 48 months after the effective date of registration~~, any active
17 ingredient first registered after October 1, 2021; and

18 (4) not later than 24 months after the effective date of this amendment to the Act,
19 the Administrator shall publish (and from time to time thereafter shall revise) a schedule
20 for completing the determinations required by section 3(c)(5)(E) and this subsection.”

21 (c) ~~The Administrator shall renegotiate existing settlements in court cases that relate to~~
22 the relationship between the Endangered Species Act and this Act to conform to the deadlines,
23 authorities and standards of this Act. ~~Not later than 24 months after the date of enactment of this~~
24 Act, the Administrator shall submit to the Committee on Agriculture of the House of
25 Representatives and the Committee on Agriculture, Nutrition, and Forestry a report that
26 describes actions taken by the Administrator to implement this subsection.

27 (d) ~~Notwithstanding any other law~~, failure of the Administrator to consult with the
28 Secretaries of the Interior and Commerce, except as provided by this Act, is not actionable in any

1 court after the effective date of this Act. ~~In any existing settlement of a court case, pending court~~
2 ~~case or future litigation, the sole and exclusive remedy for the Administrator's failure to consult~~
3 ~~with the Secretaries of the Interior and Commerce, except as provided by this Act, shall be~~
4 ~~scheduling the determinations required by section 3(c)(5)(E) for an active ingredient consistent~~
5 ~~with the periodic review of registrations established by this section of the Act.~~

6 (e) Within 180 days after the effective date of this amendment to the Act, the
7 Administrator shall publish ~~(and from time to time thereafter shall revise) a work plan and~~
8 ~~processes for implementing and enforcing standards of registration consistent with section~~
9 ~~3(c)(5)(E) consistent with registration reviews and other periodic reviews."~~

1 **SEC. 4. UNLAWFUL ACTS.**

2 Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136j, is
3 amended by adding a new subsection (c) as follows:

4 “(c) If the Administrator determines that a pesticide meets the criteria set forth in Section
5 3(c)(5)(E) and the Administrator has registered the pesticide pursuant to this Act, then any
6 incidental take of a federally listed threatened or endangered species resulting from the lawful
7 use of such pesticide pursuant to this Act shall not be unlawful pursuant to Section 9(a)(1)(B) or
8 4(d) of the Endangered Species Act of 1973 as amended, 16 U.S.C § 1533(d) and
9 1538(a)(1)(B).”

10 **SEC. 5. CONFORMING AMENDMENTS.**

11 Section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c)(7)
12 is hereby amended to read as follows:

13 “(7) REGISTRATION UNDER SPECIAL CIRCUMSTANCES. —Notwithstanding the
14 provisions of paragraph (5)—

15 “(A) The Administrator may conditionally register or amend the registration of a pesticide if the
16 Administrator determines that (i) the pesticide and proposed use are identical or substantially
17 similar to any currently registered pesticide and use thereof, or differ only in ways that would not
18 significantly increase the risk of unreasonable adverse effects on the environment and when used
19 in accordance with widespread and commonly recognized practice, it is not likely to jeopardize
20 the survival of a federally listed threatened or endangered species or directly or indirectly alter in
21 a manner that is likely to appreciably diminish the value of critical habitat for both the survival
22 and recovery of the listed species, and (ii) approving the registration or amendment in the
23 manner proposed by the applicant would not significantly increase the risk of any unreasonable
24 adverse effect on the environment and it is not likely to jeopardize the survival of a federally
25 listed threatened or endangered species or directly or indirectly alter in a manner that is likely to
26 appreciably diminish the value of critical habitat for both the survival and recovery of the listed
27 species. An applicant seeking conditional registration or amended registration under this
28 subparagraph shall submit such data as would be required to obtain registration of a similar

1 pesticide under paragraph (5). If the applicant is unable to submit an item of data because it has
2 not yet been generated, the Administrator may register or amend the registration of the pesticide”
3 “under such conditions as will require the submission of such data not later than the time such
4 data are required to be submitted with respect to similar pesticides already registered under this
5 Act.
6 “(B) The Administrator may conditionally amend the registration of a pesticide to permit
7 additional uses of such pesticide notwithstanding that data concerning the pesticide may be
8 insufficient to support an unconditional amendment, if the Administrator determines that (i) the
9 applicant has submitted satisfactory data pertaining to the proposed additional use, and (ii)
10 amending the registration in the manner proposed by the applicant would not significantly
11 increase the risk of any unreasonable adverse effect on the environment and it is not likely to
12 jeopardize the survival of a federally listed threatened or endangered species or directly or
13 indirectly alter in a manner that is likely to appreciably diminish the value of critical habitat for
14 both the survival and recovery of the listed species. Notwithstanding the foregoing provisions of
15 this subparagraph, no registration of a pesticide may be amended to permit an additional use of
16 such pesticide if the Administrator has issued a notice stating that such pesticide, or any
17 ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human
18 dietary exposure enumerated in regulations issued under this Act, and during the pendency of
19 any risk-benefit evaluation initiated by such notice, if (I) the additional use of such pesticide
20 involves a major food or feed crop, or (II) the additional use of such pesticide involves a minor
21 food or feed crop and the Administrator determines, with the concurrence of the Secretary of
22 Agriculture, there is available an effective alternative pesticide that does not meet or exceed such
23 risk criteria. An applicant seeking amended registration under this subparagraph shall submit
24 such data as would be required to obtain registration of a similar pesticide under paragraph (5). If
25 the applicant is unable to submit an item of data (other than data pertaining to the proposed
26 additional use) because it has not yet been generated, the Administrator may amend the
27 registration under such conditions as will require the submission of such data not later than the
28 time such data are required to be submitted with respect to similar pesticides already registered
29 under this Act.”
30

1 Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136c is hereby
2 amended to read as follows:

3 **"SEC. 5. EXPERIMENTAL USE PERMITS."**

4 "(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit
5 for a pesticide. The Administrator shall review the application. After completion of the review,
6 but not later than one hundred and twenty days after receipt of the application and all required
7 supporting data, the Administrator shall either issue the permit or notify the applicant of the"
8 "Administrator's determination not to issue the permit and the reasons therefor. The applicant
9 may correct the application or request a waiver of the conditions for such permit within thirty
10 days of receipt by the applicant of such notification. The Administrator may issue an
11 experimental use permit only if the Administrator determines that the applicant needs such
12 permit in order to accumulate information necessary to register a pesticide under section 3 of this
13 Act. An application for an experimental use permit may be filed at any time.

14 "(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a
15 pesticide may reasonably be expected to result in any residue on or in food or feed, the
16 Administrator may establish a temporary tolerance level for the residue of the pesticide before
17 issuing the experimental use permit.

18 "(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall be
19 under the supervision of the Administrator, and shall be subject to such terms and conditions and
20 be for such period of time as the Administrator may prescribe in the permit.

21 "(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any
22 chemical or combination of chemicals which has not been included in any previously registered
23 pesticide, the Administrator may specify that studies be conducted to detect whether the use of
24 the pesticide under the permit may cause unreasonable adverse effects on the environment and
25 [whether?] it is not likely to jeopardize the survival of a federally listed threatened or endangered
26 species or directly or indirectly alter in a manner that is likely to appreciably diminish the value
27 of critical habitat for both the survival and recovery of the listed species. All results of such
28 studies shall be reported to the Administrator before such pesticide may be registered under
29 section 3.

1 “(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time,
2 if the Administrator finds that its terms or conditions are being violated, or that its terms and
3 conditions are inadequate to avoid unreasonable adverse effects on the environment and ensure
4 that? it is not likely to jeopardize the survival of a federally listed threatened or endangered
5 species or directly or indirectly alter in a manner that is likely to appreciably diminish the value
6 of critical habitat for both the survival and recovery of the listed species.”

7 “(f) STATE ISSUANCE OF PERMITS.—Notwithstanding the foregoing provisions of this
8 section, the Administrator shall, under such terms and conditions as the Administrator may by
9 regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All
10 provisions of section 11 relating to State plans shall apply with equal force to a State plan for the
11 issuance of experimental use permits under this section.”

12 “(g) EXEMPTION FOR AGRICULTURAL RESEARCH AGENCIES.—Notwithstanding the
13 foregoing provisions of this section, the Administrator may issue an experimental use permit for
14 a pesticide to any public or private agricultural research agency or educational institution which
15 applies for such permit. Each permit shall not exceed more than a one-year period or such other
16 specific time as the Administrator may prescribe. Such permit shall be issued under such terms
17 and conditions restricting the use of the pesticide as the Administrator may require. Such
18 pesticide may be used only by such research agency or educational institution for purposes of
19 experimentation.”

20
21 Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136p is hereby
22 amended to read as follows:

23 **“SEC. 18. EXEMPTION OF FEDERAL AND STATE AGENCIES.**

24 “The Administrator may, at the Administrator’s discretion, exempt any Federal or State agency
25 from any provision of this Act if the Administrator determines that emergency conditions exist
26 which require such exemption and it is not likely to jeopardize the survival of a federally listed
27 threatened or endangered species or directly or indirectly alter in a manner that is likely to
28 appreciably diminish the value of critical habitat for both the survival and recovery of the listed
29 species. The Administrator, in determining whether or not such emergency conditions exist, shall

1 consult with the Secretary of Agriculture and the Governor of any State concerned if they request
2 such determination.”

3
4 Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136v(c) is
5 hereby amended to read as follows:

6 **“SEC. 24. AUTHORITY OF STATES.**

7 **“(c) ADDITIONAL USES. —**

8 **“(1)** A State may provide registration for additional uses of federally registered pesticides
9 formulated for distribution and use within that State to meet special local needs in accord with”
10 “the purposes of this Act and if registration for such use has not previously been denied,
11 disapproved, or canceled by the Administrator. Such registration shall be deemed registration
12 under section 3 for all purposes of this Act, but shall authorize distribution and use only within
13 such State.

14 **“(2)** A registration issued by a State under this subsection shall not be effective for more than
15 ninety days if disapproved by the Administrator within that period. Prior to disapproval,
16 the Administrator shall, except as provided in paragraph (3) of this subsection, advise the State
17 of the Administrator’s intention to disapprove and the reasons therefor, and provide the
18 State time to respond. The Administrator shall not prohibit or disapprove a registration issued by
19 a State under this subsection (A) on the basis of lack of essentiality of a pesticide or (B) except
20 as provided in paragraph (3) of this subsection, if its composition and use patterns are similar to
21 those of a federally registered pesticide and it is not likely to jeopardize the survival of a
22 federally listed threatened or endangered species or directly or indirectly alter in a manner that is
23 likely to appreciably diminish the value of critical habitat for both the survival and recovery of
24 the listed species..

25 **“(3)** In no instance may a State issue a registration for a food or feed use unless there exists a
26 tolerance or exemption under the Federal Food, Drug, and Cosmetic Act that permits the residues
27 of the pesticide on the food or feed. If the Administrator determines that a registration issued by
28 a State is inconsistent with the Federal Food, Drug, and Cosmetic Act, or the use of, a pesticide
29 under a registration issued by a State constitutes an imminent hazard, the Administrator may
30 immediately disapprove the registration.”

From: Craig Aubrey
To: [Patrice Ashfield](#)
Subject: Fwd: I need to talk to you asap about our pesticides work
Date: Thursday, January 4, 2018 8:34:27 AM

Sent from my iPhone

Begin forwarded message:

From: Cathy Tortorici - NOAA Federal <cathy.tortorici@noaa.gov>
Date: January 4, 2018 at 11:28:41 AM EST
To: Gina Shultz <gina_shultz@fws.gov>, "Craig_Aubrey@fws.gov" <Craig_Aubrey@fws.gov>
Subject: I need to talk to you asap about our pesticides work

Dear all -

I just got a draft copy of a MOA this morning -

MEMORANDUM OF AGREEMENT

between

**the Environmental Protection Agency, the Department of the Interior,
and the Department of Commerce**

on

**Establishment of an Interagency Working Group To Coordinate Endangered Species Act
Consultations for Pesticide Registrations and Registration Review**

Do you know about this and have you seen a copy of this for comment?

We should talk as soon as you can please.

Cathy T.

--

Cathy Tortorici
Chief, ESA Interagency Cooperation Division
Office of Protected Resources
NOAA's National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
(w) 301.427.8495
(c) 301.602.2193

From: Shultz, Gina
To: [Frazer, Gary](#)
Cc: [Craig Aubrey](#); [George Noguchi](#)
Subject: Re: Pesticide consultation
Date: Friday, January 19, 2018 2:29:59 PM

I will work with George on diazinon data briefing for David.

b5-DP

George, please add this to next Thursday's agenda.

Gina Shultz
Deputy Assistant Director, Ecological Services
U.S. Fish and Wildlife Service
MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-1985

On Fri, Jan 19, 2018 at 12:48 PM, Frazer, Gary <gary_frazer@fws.gov> wrote:

Gina -- Spoke to David Bernhardt this morning about the high level USDA/EPA/DOC/DOI meeting earlier this week. Nothing additional to report, other than what we've already heard.

I b5-DP

-- GDF

*Gary Frazer
Assistant Director -- Ecological Services
U.S. Fish and Wildlife Service
(202) 208-4646*

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.



News Releases from Headquarters › Office of the Administrator (AO)

EPA Administrator Scott Pruitt Signs Endangered Species Act Memorandum with State Agriculture Commissioners

01/31/2018

Contact Information:

EPA Press Office (press@epa.gov)

WASHINGTON (January 31, 2018) — Today, U.S. Environmental Protection Agency (EPA) Administrator Scott Pruitt spoke at the National Association of State Departments of Agriculture Winter Policy Conference and signed a Memorandum of Agreement (MOA) establishing an interagency Working Group to evaluate and improve the Endangered Species Act consultation process for pesticide registration.

“The current Endangered Species Act pesticide consultation process is broken,” **said EPA Administrator Scott Pruitt.** “Today, the Trump Administration is taking action to improve and accelerate this process, harmonize interagency efforts, and create regulatory certainty for America’s farmers and ranchers.”

“Once again, EPA has acted on the calls for regulatory reform from rural communities across the country. I’m glad to see Administrator Pruitt carrying out President Trump’s pro-growth agenda benefiting Oklahoma farmers and ranchers,” **said Oklahoma Commissioner of Agriculture Jim Reese.**

“It’s a breath of fresh air to have an EPA willing to listen to farmers and ranchers across the country. I applaud President Trump and Administrator Pruitt for partnering with rural America to provide the regulatory certainty that our agriculture community deserves,” **said Kentucky Commissioner of Agriculture Ryan Quarles.**

The interagency Working Group includes the Department of the Interior and Department of Commerce and comes at a critical time as EPA has 700 pesticide registrations to complete by 2022.

In addition to the MOA, Administrator Pruitt discussed EPA's efforts this past year to rescind the 2015 "Waters of the United States" (WOTUS) rule, to address dicamba drift issues, and other actions to help farmers and ranchers across the country. Later today, Administrator Pruitt and the Department of the Army will finalize a rule adding an applicability date to WOTUS. The new applicability date will be two years after today's action is published in the Federal Register, during which time both agencies will continue the process of reconsidering the 2015 Rule.

MEMORANDUM OF AGREEMENT between EPA, Interior, and Commerce on Establishment of an Interagency Working Group to Coordinate Endangered Species Act Consultations for Pesticide Registrations and Registration Review

LAST UPDATED ON FEBRUARY 1, 2018



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

February 21, 2018

Donna S. Wieting
Director, Office of Protected Resources
NOAA National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Subject: Request for Reinitiation of Section 7 Consultation Addressing the Registration Review of Pesticides Containing Chlorpyrifos, Diazinon, and Malathion

Dear Ms. Wieting:

The purpose of this letter is to initiate voluntary, informal consultation with the National Marine Fisheries Service (NMFS), as provided for under Section 7 of the Endangered Species Act (ESA), on the registration review of pesticides containing chlorpyrifos, diazinon, and malathion under Section 3 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

As you are aware, NMFS transmitted the final Biological Opinion ("BiOp") to EPA after the U.S. District Court for the Western District of Washington did not act on NMFS's motion for a two-year extension to complete its consultation with EPA. The BiOp addressed the effects of these three organophosphate pesticides on 77 listed species and 50 designated critical habitats and, in sum, reached "jeopardy" and "adverse modification" conclusions regarding 38 different species and 37 critical habitat units. On January 8, 2018, I confirmed receipt of the BiOp and informed you of EPA's intention to reinitiate consultation on the BiOp so that the consultation on these pesticides could be informed by (1) input from stakeholders, (2) further interagency discussion and agreement on the Step 3 (jeopardy determination) interim methods, and (3) additional data and analysis, including consideration of the best scientific and commercial data available on use and usage information that EPA is providing to the Services for each of these pesticides.

At this stage, EPA requests voluntary, informal consultation. During the course of this informal consultation, the information provided to NMFS may, consistent with Service regulations at 50 CFR 402.16(b), reveal effects of these actions not previously considered in the consultation. If that is the case, EPA will request that formal consultation be reinitiated.

EPA believes that initiating informal consultation on these pesticides is consistent with our interagency agreement to use this pilot consultation as a basis for developing improved methodologies for the consultation process. As I mention earlier, the consultation process was truncated when the district court did not act on NMFS's motion for a two-year extension prior to the court-ordered December 31, 2017, deadline. As a result, the agencies were unable to fully engage on all consultation methodologies – a fact that NMFS itself admitted to the court. In addition, because of that deadline, NMFS was also unable to provide a draft BiOp for public and stakeholder input and, therefore, did not complete a critical element of the agreed-upon consultation process on pesticides. As acknowledged in NMFS Deputy Assistant Administrator Samuel Rauch's declaration to the court, because stakeholders – including governments, universities and growers/users – have significant amounts of relevant information and are the ultimate implementers of pesticide labels in the field, EPA and the Services have jointly concluded that it is critical that stakeholders have a chance to provide input to help the agencies determine whether risk reduction measures are technologically and economically feasible. Accordingly, in the coming weeks, EPA intends to open a public comment period on the recently issued BiOp. Once that public comment period closes, EPA will provide the input received to NMFS, consistent with the stakeholder engagement process jointly developed in 2013 by EPA, the Services, and USDA.

At the request of the U.S. Fish and Wildlife Service (FWS), EPA has recently agreed to provide the Services with use and usage information on all three pesticides that has not previously been considered which will allow the Services to further refine their conclusions regarding jeopardy and adverse modification for chlorpyrifos, diazinon, and malathion. Indeed, FWS has made clear that it believes these data are necessary to fully inform formal consultation. Given that FWS and NMFS operate under the same statutory and regulatory standards and implementation policies, these data should likewise be of critical value to EPA's informal consultation with NMFS. In furtherance of the FWS request, my staff has already provided use and usage data to both NMFS and FWS, specifically providing the Services with updated information on diazinon. EPA expects to compile the use and usage information for chlorpyrifos by April 30, 2018, and malathion by May 31, 2018. Additionally, EPA had already begun compiling use and usage data for methomyl and carbaryl in anticipation of upcoming consultations. If discussions with the Services result in a change in the scope of data collection or a change in the analyses of the data needed to support reinitiation of consultation, then it is important to note that this could impact the aforementioned schedule.

I have asked my staff to participate in discussions between EPA, FWS, and NMFS regarding how this information can be used to inform our consultations with FWS and NMFS. Those discussions should also be used for the purposes of further developing and agreeing upon the methodologies used by FWS and NMFS for Step 3 of the consultation process on pesticides. These discussions will inform whether EPA should re-initiate formal consultation on the December 2017 BiOp. The Step 3 methodologies used in the BiOp were not fully vetted in

interagency discussions and if this consultation is to serve the goal of ensuring that the agencies each understand and agree with the methodologies used in the consultation process, it is critical that the agencies complete those discussions and determine whether a revision to the methodologies used in the December 2017 BiOp is warranted.

EPA has performed a cursory review of the BiOp and finds that there is a general lack of transparency and reproducibility, which makes it difficult to either understand or fully evaluate the Step 3 methods used in the BiOp. One example is that there is not enough information provided in the R-Plots, which are graphs used to inform the jeopardy determinations, to allow for replication of the results. In addition, based upon our preliminary review of the BiOp, EPA has identified several technical concerns, which have been discussed previously with NMFS including: (1) the lack of a clear relationship between how effects at the individual level change species demographic rates and, by extension, have population level impacts; (2) that no quantitative thresholds underpinning the definition of "jeopardy" (*i.e.*, the exposure level or level of effect results in "jeopardy") have been articulated, without which there is no way to tie the mitigation options to levels that would no longer result in "jeopardy"; (3) the criteria used to evaluate the likelihood of exposure appears to be inconsistent (*e.g.*, some of the criteria, such as persistence and multiple applications, are accounted for twice in the process); and (4) assumptions of all pesticide applications occurring at the same time at the highest maximum use rate across all potential use sites are unrealistic. Furthermore, an element of the reasonable and prudent alternatives (RPAs) is based on a European system (MagPIE), which EPA has not evaluated for use in the U.S. pesticide regulatory context. Moreover, the reasonable and prudent measures (RPMs) do not address EPA's concerns previously raised in comments on earlier salmonid BiOps regarding the impracticability and the resource challenge of monitoring programs, in addition to duplicative incident reporting. As we continue our thorough review and gain more familiarity with the contents of the BiOp, we will engage with your staff to discuss these issues in detail.

We look forward to working with NMFS on these matters and will be reaching out to NMFS staff shortly to begin scheduling discussions for informal consultation on chlorpyrifos, diazinon, and malathion.

Sincerely,



Richard P. Keigwin, Jr.
Director, Office of Pesticide Programs

From: Shultz, Gina
To: [David Bernhardt](#); [Skipwith, Aurelia](#)
Cc: [Gary Frazer](#)
Subject: Pesticide Working Group Monthly Update
Date: Monday, April 2, 2018 1:34:58 PM
Attachments: [Pesticide Usage Working Group - Member List \(3\).pdf](#)
[Pesticide Usage Working Group April 2 Update.docx](#)

Our monthly update and the revised group list are attached.

Please let me know if you have any questions, Gina

Gina Shultz
Deputy Assistant Director, Ecological Services
U.S. Fish and Wildlife Service
MS: ES
5275 Leesburg Pike
Falls Church, VA 22041-3803
703-358-1985



September 24, 2018

Mr. Craig Aubrey
U.S. Fish and Wildlife Service
Division of Environmental Review
5275 Leesburg Pike
Falls Church, VA 22041

Ms. Cathy Tortorici
U.S. Fish and Wildlife Service
ESA Interagency Cooperation Division
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910

Public Comments Processing
Attn: FWS-HQ-ES-2018-0009
U.S. Fish and Wildlife Service,
MS: BPHC, 5275 Leesburg Pike
Falls Church, VA 22041-3803

Submitted via Regulations.gov

Re: Comments on the Proposal to Revise the Regulations on Interagency Cooperation Under the Endangered Species Act; Docket ID No. FWS-HQ-ES-2018-0009, 83 Fed. Reg. 35178 (July 25, 2018)

Dear Mr. Aubrey and Ms. Tortorici:

CropLife America (CLA)¹ and RISE (Responsible Industry for a Sound Environment) ®² respectfully submit these comments on the proposal of the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services) to amend their regulations on interagency cooperation under Section 7 of the Endangered Species Act (ESA).

CLA, RISE and their members are directly affected by the requirements of Section 7 of the ESA as applied to the registration and registration review decisions of the U.S. Environmental

¹ Established in 1933, CropLife America represents the developers, manufacturers, formulators and distributors of plant science solutions for agriculture and pest management in the United States. CropLife America's member companies produce, sell and distribute virtually all the crop protection and biotechnology products used by American farmers.

² RISE is a national not-for-profit trade association representing more than 220 producers and suppliers of specialty pesticide and fertilizer products to both the professional and consumer markets. RISE member companies manufacture more than 90 percent of domestically produced specialty pesticides used in the United States, including a wide range of products used on lawns, gardens, sport fields, golf courses, and to protect public health.

Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

For decades, CLA and RISE have engaged actively at the intersection of ESA and FIFRA, including through litigation and administrative actions. CLA and RISE are committed to working with other stakeholders to help identify and implement pragmatic improvements to the ESA review process for pesticide registration decisions, with the goal of ensuring that our nation can fulfill its agricultural and pest control needs while meeting the requirements of the ESA. For example, we endorsed the January 2018 Memorandum of Agreement among the Environmental Protection Agency, the Department of the Interior, and the Department of Commerce on Establishment of an Interagency Working Group to Coordinate Endangered Species Act Consultations for Pesticide Registrations and Registration Review (the MoA). And in April 2018, CLA was the lead signatory on a multi-stakeholder letter that identified six administrative improvements to the pesticide consultation process under the MoA.³

We commend the Services for proactively offering amendments to the interagency cooperation regulations with the intent to “improve and clarify interagency consultation, and make it more efficient and consistent, without compromising conservation of listed species.” 83 Fed. Reg. at 35179. We emphatically support these goals.

We recognize that the proposed regulatory amendments are not directed specifically at ESA reviews for pesticide registration decisions. However, we believe that several of the proposed amendments would support our goals towards pragmatic improvements to the process. In the interest of continuing to provide constructive feedback to the Services on improvements to the pesticide consultation process, we offer the following comments on the proposed revisions as we envision them being applied in the context of pesticide registration decisions. Although our interests are affected by many aspects of the Services’ proposals on interagency consultations, listing and critical habitat, and the Section 4(d) rule, for brevity our comments here focus on those aspects of the consultation process that most directly affect our interests.

I. The proposed regulations’ “collaborative” approach to consultations would support the establishment of more efficient consultation processes for pesticide registration decisions.

The Services propose several amendments to their regulations that would further the goals of clarification and efficiency that we have long advocated for in the context of pesticide consultations. We support these proposals that, in combination, could create more efficient processes for pesticide consultations by taking greater advantage of EPA’s expertise in pesticide regulation and the preparation of the associated ecological risk assessments.

For example, the Services have described the proposed amendments (h)(3) and (h)(4) to the current § 402.14(h) as part of “a collaborative process to facilitate the Federal agency’s development of an initiation package that could be used as all or part of the Service’s biological opinion.” 83 Fed. Reg. at 35188. Proposed § 402.14(h)(4) provides that: “[A] Federal agency

³ Letter to Secretaries Perdue, Ross and Zinke and Administrator Pruitt, Re: January 31, 2018 Memorandum of Agreement Implementation (April 10, 2018).

and the Service may agree to follow an optional collaborative process that would further the ability of the Service to adopt the information and analysis provided by the Federal agency during consultation in the development of the Service's biological opinion to improve efficiency in the consultation process and reduce duplicative efforts." 83 Fed. Reg. at 35192. The Services describe this as the "adoption" of the Federal agency document and explain that the "end result of the adoption consultation process is expected to be the adoption of the initiation package with any necessary supplementary analyses and incidental take statement to be added by the Service as the Secretary's biological opinion in fulfillment of section 7(b) of the Act." *Id.*

This proposal would complement the proposed § 402.14(h)(3), which provides that "the Service may adopt all or part of a Federal agency's initiation package" in its biological opinion, thus allowing the Services "to utilize portions of these documents in the development of our biological opinion to improve efficiency in the consultation process and reduce duplicative efforts." *Id.* at 35188.

The increased collaboration with the Federal agency the proposed amendments describe is consistent with our longstanding advocacy for greater coordination between EPA and the Services regarding pesticide consultations. We recommend that the Services utilize this proposed approach to collaborate with EPA to establish more efficient processes for consulting on pesticide registration decisions. In recent years, pesticide biological opinions have included thousands of pages and consumed years of work for the Services and EPA. More efficient consultation processes tailored to pesticide decisions would allow the Services to better manage their overall consultation workload and provide the agricultural and public health sectors with timelier and more predictable outcomes under the ESA. More efficient processes would incorporate several key elements, including taking advantage of the EPA's greater resources and its unique expertise in ecological risk assessments, as well as those of pesticide registration applicants.

We support these proposed amendments to § 402.14(h) and their application to pesticide consultations. Such application would allow the extensive work EPA undertakes to complete its biological evaluations to be more focused, more efficient and to more readily form the basis of a subsequent biological opinion. In this respect, the proposal is similar to the "optional formal consultation procedure for FIFRA actions" at 50 C.F.R. § 402.46, which allows the Services to finalize their biological opinions based primarily on data, analyses, and write-ups that EPA provides, including draft biological opinions.⁴

The proposed § 402.14(l) "Expedited Consultation" provision would similarly further the purposes of this collaboration with the Federal agency – for our purposes here, the EPA. In their proposal, the Services explain that this proposal would "likely involve proposed actions that would otherwise go through the regular formal consultation process and require an incidental take statement." A key element of this approach is "the development of a sufficient initiation package (as described in § 402.14(c) of the regulations) that provides all the information needed to allow the Services to prepare a streamlined consultation response with mutually agreed-upon

⁴ This part of the 2004 ESA-FIFRA counterpart regulation was upheld in *Washington Toxics Coalition v. U.S. Fish & Wildlife Serv.*, 457 F. Supp. 2d 1158 (W.D. Wash. 2006).

expedited timeframes.” 83 Fed. Reg. at 35188. The contents of a detailed and comprehensive initiation package—particularly one based on an extensive biological evaluation—should provide a strong foundation for an expedited consultation. We encourage the Services to work with EPA to develop that foundation using the expedited consultation process and optional collaborative consultations. Even if the agencies are unable to adopt this approach today, they could start developing the documentation and policies needed to implement the approach in the near future.

To begin implementing an optional collaborative consultation process for pesticides, the Services should work with EPA to develop guidance and templates that reflect a shared understanding among the three agencies about the contents of pesticide biological evaluations and biological opinions. For example, the agencies could draft a document that summarizes the required contents of each section of a biological opinion, including key science, policy, and legal issues. That document should have a goal of providing EPA with enough guidance for it to draft analyses to provide to the Services for their final biological opinions or for the Services to review responsive materials provided by registration applicants. In particular, guidance on evaluating the potential effects of a FIFRA decision on survival and recovery at the species level (rather than at the individual organism level) would help ensure that EPA’s assessments more closely align with the assessments the Services typically conduct during formal consultation.

Ideally, this process should lead to the Services working with EPA to revisit 50 C.F.R. Part 402, Subpart D and promulgate appropriate provisions to replace those vacated in the *Washington Toxics Coalition v. U.S. Fish & Wildlife Serv.*, 457 F. Supp. 2d 1158 (W.D. Wash. 2006) decision. The work done by EPA and the Services to establish the guidelines suggested above should help to establish the common understanding necessary to successfully implement § 402.46 and reconsider/repromulgate the key elements of former § 402.45. We are not urging a delay in the promulgation of the provisions on which comment is sought here but urge that further attention to 50 C.F.R. Part 402, Subpart D be a high priority as a future improvement.

II. Refine the scope of consultations to better reflect the most likely pesticide use scenarios.

The Services propose to modify the definition of “effects of the action” to state, in pertinent part:

Effects of the action are all effects on the listed species or critical habitat that are caused by the proposed action, including the effects of other activities that are caused by the proposed action. An effect or activity is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur.

Proposed 50 C.F.R. § 402.02.

First, the proposal would clarify that all activities and effects of a proposed action must occur “but for” the action and must be “reasonably certain” to occur. *Id.* Second, the proposal would eliminate the concepts of indirect effects, direct effects, interrelated actions, and interdependent

actions by consolidating all of those concepts under the broader definition of “effects of the action.” *See* 83 Fed. Reg. at 35183.

We support this broadening of the definition. A major issue with pesticide consultations is how to properly define the scope of the proposed action and its effects. The proposed definition could result in pesticide effects determinations (and, ultimately, biological opinions) that better reflect real-world use scenarios. The proposed definition of “effects of the action” simplifies the definitional task and could help eliminate disputes about the scope of a pesticide action. *See* 83 Fed. Reg. at 35183.

In the context of pesticide registration decisions, any potential effects on listed species or their critical habitat result from the *use* of the registered pesticide, not the registration decision itself. Under the proposal, use of a registered pesticide would be considered an “activity” that is “caused by” the proposed pesticide registration decision – the Federal action – if, and only if, the use meets the but-for and the reasonably certain tests. Importantly, only uses that are reasonably certain to occur would be considered an “activity” in a pesticide consultation. Thus, the Services would presumably not assume maximum allowable label rates, but rather constrain the scope of consulted-on “activities” to reasonably certain use scenarios.

The proposed clarification to “effects of the action” would also address the ambiguities of the current regulation’s phrasing of the distinction between “direct” and “indirect” effects, which has allowed some to argue – incorrectly, we believe – that years of actual use experience with the same or comparable pesticide products now under ESA review can be ignored. The proposed revisions clarify the importance of such use information in providing support for an “activity” that is “reasonably certain” to occur, and properly rely upon years of actual pesticide use experience in addition to the Services’ sound statutory interpretation.

In data-deficient situations, the Services can often make reasonable estimates of use based on actual data from more limited geographic areas or states that are representative of the areas in question. This approach aligns with the Services’ stated policy of “reasonably defin[ing] the reach of the effects analysis and address[ing] concerns about extending the analysis into an unreasonably wide arena.” 83 Fed. Reg. at 35184.

The proposed revisions would also require that the potential *effects* of those pesticide uses (*e.g.*, reduction of prey base) meet both the “but for” and “reasonably certain” standards. More guidance is needed to understand how the Services’ intend to apply the “reasonably certain to occur” standard to effects. The proposal includes an explanation of when “activities” (but not “effects”) are reasonably certain to occur. There is no clear explanation for this distinction, leaving the public with questions about whether the application of this concept to effects is subject to a different standard than that for activities. The Services should clarify this ambiguity.

Also, the proposal does not draw a clear enough distinction between activities and effects, and the value of identifying activities separate from effects. In finalizing the proposed definition of “effects of the action,” the Services should consider including examples in the preamble to the final regulations of how to properly interpret the distinction between a proposed action,

activities, and effects. We urge the Services to clarify these terms and to consider adopting the interpretation set forth above in any future policies or rules specific to pesticide consultations.

III. Pursue other opportunities to expedite consultations.

The Services have identified two other proposals to expedite consultations, both of which could improve the timeliness of pesticide consultations or optimize the use of the Services' limited resources.

a. *Adopt timeframes for informal consultation and consequences for missed deadlines.*

Informal consultation is, essentially, the written concurrence of the Service with the Federal agency's determination that the action is not likely to adversely affect listed species or critical habitat. *See* 50 C.F.R. § 402.13(a). While the Services do not propose specific regulatory amendments to the regulations regarding informal consultation at § 402.13, they do "seek comment on (1) whether a deadline would be helpful in improving the timeliness of review; (2) the appropriate length for a deadline (if not 60 days); and (3) how to appropriately implement a deadline." *Id.* at 35186.

We support the adoption of a realistic and enforceable deadline for informal consultations. Because informal consultations are a well-established part of ESA reviews outside the context of pesticide registration decisions, a 60-day timeline should be appropriate. However, in the context of ESA reviews for pesticide registration decisions, this goal may not be readily achievable in the short term.

As discussed above in support of increased coordination, we encourage the Services to work with EPA to develop guidance and templates that reflect a shared understanding about the contents of pesticide biological evaluations and biological opinions. As those are developed, strict timetables for concurrence may be difficult to achieve. In that interim, it would be appropriate for the Services to set expectations for the duration of specific informal consultations for pesticide actions, in coordination with EPA and the applicant. If those expectations are not met, there should be a process to elevate the consultation to the attention of higher-level managers within EPA and the Services and to appropriate officials within the Departments of the Interior and Commerce. Setting these goals would provide a benchmark to evaluate the performance of the pesticide consultation process over time, with a goal of eventually meeting a predictable fixed period.

b. *Consolidate consultations for joint-jurisdiction species if an applicant prefers to use this approach.*

Although not reflected in any proposed changes to the regulations as part of this announcement, the Services have sought comment "on the merit, authority, and means for the Services to conduct a single consultation, resulting in a single biological opinion, for Federal agency actions affecting species that are under the jurisdiction of both FWS and NMFS." 83 Fed. Reg. at 35179. The value of such a proposal would be in potentially reducing the inefficiencies that

result from the Services' current practice of generally conducting separate consultations, resulting in one biological opinion from FWS and another from NMFS, for federal actions affecting joint jurisdiction species.

In the context of pesticide consultations, the proposal has the potential to vastly reduce the Services' collective workload on certain pesticide consultations by allowing FWS and NMFS biologists to collaborate on a single biological opinion rather than issue two separate opinions, each of which is likely to exceed several hundred pages. Unlike most other consultations, nationwide pesticide consultations could benefit disproportionately from this proposal because many of them are likely to involve both FWS and NMFS species. This is another reason the Services should consider refocusing on the separate set of procedures, rules, or guidelines specific to the unique circumstances of pesticide consultations. As part of this effort, the Services should ensure that they are in internal agreement about their legal, policy, and scientific approaches to pesticide consultations, as we have noticed potential discrepancies between the Services' approaches.

If the Services proceed with a proposal to codify this action through regulation, however, the proposal should allow the applicant the option to pursue this unified consultation approach, rather than be forced to do so. There may be circumstances where combining the two agencies' efforts would result in undue delay or complexity, so it is important that the applicant be allowed to preclude such combinations where that process could result in unnecessary delay of the process.

IV. Increased involvement by pesticide registrants as applicants, and by other stakeholders, could help improve the ESA review of pesticide registration decisions.

For a variety of reasons, we believe that pesticide registrants have not benefitted from the more direct conversations with the Services that many other Section 7 applicants have enjoyed. We recommend the Services work with EPA to address this imbalance and urge the Services to reaffirm in the regulations themselves the rights of the registrants as applicants, either in the finalization of this regulation, or in an upcoming round of administrative proposals. *See* 83 Fed. Reg. at 35179. The opportunity for involvement by a broader group of stakeholders in pesticide registration decisions, including the user community who would have valuable insight into any reasonable and prudent measures and alternatives, should also be codified.

The Services should codify the role of pesticide registrants as "applicants" in nationwide pesticide consultations and, even more importantly, articulate how the Services will interact with those registrants in a manner that maximizes the opportunities for them to provide data and analyses that help inform the Services' decisions in informal and formal consultations. For example, registrants and their customers often have unique and valuable information about how, when, and where a pesticide is applied and about toxicological and related characteristics of their products. This information may provide important context about the timing and magnitude of potential effects of the pesticide on listed species. Better communication between the Services and registrants also will streamline development of any reasonable and prudent measures and alternatives and help ensure that those measures and alternatives are technologically and economically feasible to implement.

Relatedly, we urge that the Services consider recognizing the validity and reliability of scientific and technical analyses pertinent to ESA analyses prepared by applicants in support of their FIFRA applications. Here, the Services can take a lesson from EPA, which has developed study guidelines and Good Laboratory Practice procedures that assure good science. The Services should equally be prepared to rely on studies and analyses prepared by applicants that meet established quality standards – such studies will likely be the “best available” studies, which are what the ESA requires as the basis for its decision-making.

Second, we encourage the Services and EPA to develop a joint regulation that codifies the key elements of the 2013 paper finalized by EPA, USDA, and the Services entitled, “Enhancing Stakeholder Input in the Pesticide Registration Review and ESA Consultation Processes and Development of Economically and Technologically Feasible Reasonable and Prudent Alternatives.” 78 Fed. Reg. 18585 (March 27, 2013). Importantly, the paper added to the rights of applicants (pesticide registrants) and other important stakeholders, including pesticide users, by committing the Services and EPA to the following, along with other improvements:

- During comment periods on draft biological opinions, the EPA will reach out to potentially affected pesticide users to discuss the technical and economic feasibility of reasonable and prudent alternatives intended to avoid jeopardy to threatened or endangered species.
- EPA will collect and organize comments on draft biological opinions and provide them to the Services. The Services will prepare a document to be included in the administrative record of the consultation explaining how the comments were considered, and as appropriate, how the biological opinion was modified to address the comments.

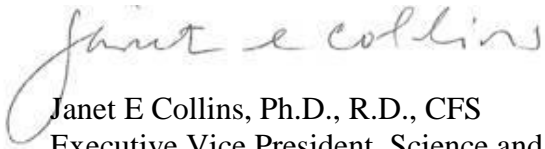
Unfortunately, these and other applicable procedures were not followed in the recent consultations on three organophosphate pesticides purportedly because of court-ordered settlement deadlines that left inadequate time for notice and comment on the draft biological opinions. To help ensure that any future settlement deadlines are consistent with these procedural commitments, the Services and EPA should codify them in regulation.

As stated above, CLA supports the goals and substance of these proposed regulations. Clarity in definitions to better reflect current practice, and to streamline processes, are welcome additions to this process. We believe that the specific suggestions outlined above are consistent with the goals of the proposal and would further support a more effective, efficient process to address ESA review of pesticide registration decisions.

CLA, RISE and their member companies are committed to working with the Services and all interested stakeholders in developing a process for the ESA review of pesticide registration decisions that specifically protects listed species and their habitat, while recognizing the important role that pesticides play in agriculture, and in the protection and enhancement of property, homes and human health. We appreciate the opportunity the proposed revisions of these regulations provides to offer ideas to improve this process and would welcome the opportunity to engage on the ideas contained in this letter.

Should you have any questions about, or wish to have further information on these comments, please contact Janet Collins or Aaron Hobbs using the contact information in their signature lines. Thank you for your consideration of these comments.

Respectfully,



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September 24, 2018

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Re: Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation, 83 Fed. Reg. 35178 (July 25, 2018)

Dear Mr. Aubrey and Ms. Tortorici:

The National Mining Association (NMA) welcomes the opportunity to present its views on potential updates to the Endangered Species Act (ESA) regulations pertaining to interagency cooperation. Changes to the 50 CFR Part 402 regulations implementing the Section 7 consultation process are long overdue. NMA is encouraged by the Fish and Wildlife Service's (FWS) and the National Marine Fisheries Service's (NMFS) (jointly, the Services) proposals to improve and clarify the interagency consultation processes and make them more efficient and consistent.

NMA is the national trade association representing the producers of most of America's coal, metals, industrial and agricultural minerals; the manufacturers of mining and mineral processing machinery, equipment and supplies; and engineering, transportation, financial and other businesses that serve the mining industry. NMA members' coal and mineral operations routinely require federal authorizations that trigger or rely on Section 7 consultation under the ESA. As such, they have extensive experience with the consultation process, particularly with respect to the delays and additional costs incurred by ambiguity in the existing Part 402 regulations and inconsistency between the current 402 regulations and the Act itself. While NMA strongly supports the conservation and recovery goals of the ESA, revisions are necessary to improve the consultation processes. These comments provide the mining

industry's response to the proposed changes as well as recommendations for further improvement.

I. Introduction

The true purpose of the ESA is to advance species recovery with the ultimate goal of removing species from threatened or endangered status. Instead, the statute has become a mechanism for perpetual listings accompanied by over-designation of land as critical habitat and restrictions on the regulated community that fail to advance species recovery. Regardless, NMA members are committed to the conservation and recovery of threatened and endangered species and their habitats both during and after operations. In fact, NMA members have reclaimed millions of acres of land, much of which is restored to serve as prime species habitat. They also however, have a strong interest in regulatory certainty with respect to their obligations under the ESA and stability in their business planning.

The Services' have appropriately identified the Section 7 consultation regulations as a candidate for revision under Executive Order 13777, "Enforcing the Regulatory Reform Agenda" (E.O. 13777). Several aspects of the current regulations are timely for review under the E.O. 13777 criteria because they are not consistent with the statute itself or fail to take advantage of the best available information in an efficient manner, often resulting in Section 7 processes that are longer and costlier than necessary. Implementation of the changes outlined in the proposed rule would reduce timeframes and resources needed to conduct consultation and reduce costs for consulting agencies as well as project applicants.

A significant theme of these comments, consistent with NMA membership commitment to conservation referenced above, is the importance of better collaboration between the regulated community and the federal action and consulting agencies. As discussed in more detail below, one of the significant benefits of continuous interaction and involvement between the project proponent and regulatory agency staff is to better facilitate mitigation measure development when effects and impacts are determined to be problematic and to meet stated goals of the ESA by NMFS or FWS consultation teams. Project proponents are often excluded during these discussions and consequently, regulatory staff may develop and propose mitigation or conclude that a project may have an adverse effect that the proponent and/or land management/lead agency may find environmentally unfavorable for other reasons besides ESA issues.

As a result, project proponents and other cooperating agencies are then forced to cease what may be otherwise productive discussions and offer counter proposals and advocacy as to why the proposed changes are unnecessary, unjustified, technically infeasible or economically unsound. This scenario involves unnecessary paperwork, consumes staff time and resources, and often causes cost overruns and excessive delay in project timelines. This outcome can be avoided if the project proponent is simply involved in the process at a more interactive level at an earlier stage in the process and able to address the infeasibility of suggested project alternatives.

II. Definition of “Destruction or Adverse Modification”

Once critical habitat is designated, Section 7(a)(2) of the ESA requires federal agencies to ensure that their actions will not result in the destruction or adverse modification of critical habitat.

The key factor for determining adverse modification is whether, with implementation of the proposed federal action, the affected critical habitat will continue to have the capability to serve its intended conservation role for the species. Section 3(3) of the Act provides that:

The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Endangered Species Act are no longer necessary.¹

Accordingly, proper designation of critical habitat helps ensure that proposed actions will not result in the adverse modification of habitat to the point that the species will not achieve recovery, meaning they will not be capable of being removed from the threatened or endangered species list. Thus, precisely defining “destruction or adverse modification” is essential for efficient administration of the ESA by the Services as well as to provide the regulated community legal guidance in project planning with a nexus to a federal permit, license or funding mechanism.

A. Overreach and Ambiguity in the 2016 Revised Definition

In 2016, the Services finalized a revised definition of “destruction or adverse modification” in response to two circuit court decisions which invalidated the previous 1986 definition. The 1986 regulations defined destruction or adverse modification as:

“A direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.”²

This definition was voided by the Fifth Circuit Court of Appeals in 2001³ and the Ninth Circuit Court of Appeals in 2004,⁴ both finding that the regulation set too high of a threshold by requiring FWS to find a negative impact to both survival *and* recovery of the species. The courts reasoned that the conjunctive requirement effectively eliminated

¹ 16 U.S.C. § 1532 (3).

² 50 CFR 402.2, 51 Fed. Reg. 19926, June 3, 1986.

³ *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001)

⁴ *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004).

destruction or adverse modification findings for actions that only triggered impairment to recovery, but not survival of a species, and thus fell short of properly implementing the requirements of the statute.⁵

In addressing this defect identified by the circuit courts, FWS and NMFS promulgated a new definition, which the Services now recognize includes unnecessary redundancies and intensifies confusion about the meaning of the regulation. The 2016 regulations define destruction or adverse modification as:

“A direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.”⁶

In revising the definition, the Services went well beyond the narrow issue identified by the courts and crafted an ambiguous definition that ultimately provided the Services far more discretion than the Statue provides. By basing destruction or adverse modification findings on the impact to future development of physical or biological features which may not currently exist, the Services established a moving target with no benchmarks for the Services to follow other than their own hypothetical projections. The definition also offered no certainty to the regulated community and made planning conservation of listed species in the context of project development next to impossible. Under the 2016 definition, the Services could find that a proposed action would destroy or adversely modify critical habitat if the action would somehow prevent or delay habitat from developing certain features over time that would support the recovery of the species. This sweeping determination effectively results in an adverse modification to all critical habitat no matter how immediate or remote that modification may be or the nature of the proposed action.

In comments submitted in response to the 2016 proposed rule, NMA objected to the framework which allows the Services to focus on future values and consider impacts on a geographic range if those areas could support features that would benefit a species in the future (in addition to authorizing consideration of any direct and indirect effects of the proposed action). NMA expressed that this approach improperly granted the Services almost unfettered discretion in making a “destruction or adverse modification” finding. Unfortunately, this approach was ultimately adopted with only minor form edits.

NMA also counseled against adopting a definition which is ambiguous with respect to the scale at which the determination of destruction or adverse modification is made. The Services seemed to grasp the risk of this approach when they discussed in the preamble to the final rule that; “the determination of “destruction or adverse modification” will be based on the effect to the value of critical habitat for the conservation of a listed species. In other words, the question is whether the action will

⁵ *Id.*

⁶ 81 Fed. Reg. 7214, Feb. 11, 2016

appreciably diminish the value of the critical habitat as a whole, not just in the action area (i.e., all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.)”⁷ Nevertheless, the Service deliberately left the clarifying words “as a whole” out of the final definition causing confusion about whether or not any diminishment at the site-specific level, however small, rises to the level of triggering adverse modification under the regulation.

While the 2016 definition attempts to offer an example of the type of alteration that would trigger the adverse modification finding, in doing so the definition suggests that the preclusion or delay of development of physical or biological features is the focus of the analysis, rather than alteration of existing features. As a result, the second sentence of the current definition adds nothing to clarify the first sentence and only detracts from the general principle that destruction or adverse modification findings are based on evaluation of the impact to the conservation value of the habitat as a whole.

B. Proposed Definition of Destruction or Adverse Modification

In our submission to the Department of the Interior’s regulatory review request, NMA identified the 2016 definition of adverse modification as a candidate for withdrawal or revision and believe the latest proposed we welcome the revisions proposed by the Services. NMA supports the proposal to amend the definition adding the phrase “as a whole” to clarify that not all diminishment constitutes destruction or adverse modification, but instead the determination should be made in the context of the habitat’s ability to provide recovery overall. NMA also supports the Services’ proposal to remove the second sentence of the 2016 definition which only added confusion regarding the universe of alterations that constitute destruction or adverse modification.

However, in addition to these much-needed fundamental changes, we recommend additional improvement to make the definition even more faithful to the statute. The text of Section 7(a)(2) of the ESA requires consulting agencies to ensure that federal agency actions are “not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction **or** adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. (emphasis added).” The use of “or” in the statute clearly delineates the congressional intent for the distinct concepts of “destruction” and “adverse modification.” To reflect this statutory distinction in the regulations, recommends adoption of the definition NMA submitted to the Services in 2014:

“Adverse modification of habitat” means to engage in a discretionary action or discretionary portion of an action that *significantly alters*:

- (a) The physical or biological features essential to the conservation of the species existing at the time of designation that were the basis of the critical habitat designation; and

⁷ 28 Fed. Reg. 7221, Feb. 11, 2016

- (b) The designated critical habitat to such an extent as to preclude its ability as a whole to fulfill its role to conserve the species.

For designated unoccupied habitat, only subparagraph (b) applies. “Destruction of habitat” means to engage in a discretionary action or the discretionary portion of an action that results in the *permanent loss* of:

- (a) The physical or biological features essential to the conservation of the species existing at the time of designation that were the basis of the critical habitat designation; and
- (b) The designated critical habitat to such an extent as to preclude its ability as a whole to conserve the species.

For designated unoccupied habitat, only subparagraph (b) applies.

This approach advances the intent of Congress by providing separate consideration by the Services for the adverse modification versus destruction of critical habitat. To the extent that “adverse modification of critical habitat” is triggered by proposed actions that “significantly alter” designated critical habitat, and the “destruction” of habitat as measured by the “permanent loss” the rule would account for a distinction between “adverse modification” and “destruction” of critical habitat. Clearly, the more severe regulated activity of critical habitat under the ESA is its “destruction.” This proposed definition connects the statutory terminology with a more precise regulatory definition, specifically, “permanent loss.”

These separate proposals offer a better fit with the intent of Congress by separating the activities of destroying critical habitat and the less severe adverse modification of designated critical habitat, while retaining the core principle of the proposed definition—that the evaluation be measured against the impact to conservation as a whole. The Services should adopt the NMA-proposed definition to ensure consistency with the ESA.

III. Definition of “Effects of the Action”

NMA supports adoption of the proposed definition of “effects of the action.” The proposed changes would focus the effects analysis by eliminating the cumbersome and time-consuming process of attempting to characterize effects as direct or indirect and as either interrelated or interdependent actions. Instead, requiring that an effect be both a “but for” cause and “reasonably certain to occur” will define the appropriate scope of effects while eliminating extraneous impacts (e.g., those for which the proposed action is not a but for cause and does not cause a reasonably certain likelihood to occur). These proposed changes are consistent with the streamlining objectives of E.O. 13777 and would likely prevent low-impact activities from triggering Section 7 consultation. Removing consultation requirements for those actions that fall below the threshold of Section 7 would reserve more agency resources to allocate towards actions that could potentially harm listed species and critical habitat.

IV. Definition of Programmatic Consultation

The Services aptly note that the use of programmatic consultation “can reduce the number of single, project-by-project consultations, streamline the consultation process, and increase predictability and consistency for action agencies.” Prudent use of programmatic consultations can indeed save considerable time and resources for both consulting agencies and the regulated community. The administrative process alone of defining the scope of a project specific analysis, collecting relevant data, and then engaging with project proponents often far too late in the process makes piecemeal consultations highly time and resource intensive simply to initiate, let alone complete. Also, because programmatic consultation is better suited to evaluate large scale, range wide impacts to species and their habitat, properly implemented, programmatic consultation is more consistent with the ESA’s requirement to consider impacts to conservation and recovery of listed species and critical habitat as a whole.

Similar to programmatic reviews under the National Environmental Policy Act (NEPA) for which subsequent site-specific NEPA reviews are necessary, it is vital that framework programmatic consultations serve to evaluate impacts common across a range of actions while relying on subsequent site-specific reviews to evaluate those elements unique to the specific site in question. To do otherwise results in reinventing the wheel with each site-specific consultation, thus rendering the framework programmatic consultation a waste of time and resources. Because framework programmatic consultations generally do not cover actions likely to result in potential take, and are therefore generally not intended to confer incidental take statements which are instead reserved for the site-specific consultation,⁸ their utility is in helping to expedite those subsequent reviews. Impacts that result from implementation of the programmatic action at large, or those that are likely to be repeated across a range of subsequent similar actions should be analyzed in the programmatic biological opinion and then incorporated into site-specific biological opinions without the need for reanalysis.

The Federal Register notice for the proposed rules references the 2015 changes made to the Section 7(a)(2) implementing regulations related to framework programmatic actions and mixed programmatic actions. The Services should further amend these regulations to allow additional flexibility for mixed programmatic actions for which subsequent site-specific Section 7 consultations are not required. Flexibility is needed to allow potential impacts to be evaluated at the programmatic level to the degree possible while working within the confines of other applicable law to properly evaluate site specific impacts.

An example of this scenario are permits issued by state regulators with approved programs under the Surface Mining Control and Reclamation Act (SMCRA). Under the SMCRA program, the only federal actions triggering section 7 consultation are promulgation of new regulations by the Office of Surface Mining Reclamation and

⁸ 80 Fed. Reg. 26835, May 11, 2015

Enforcement and the approval of state programs under SMCRA that could potentially jeopardize threatened or endangered species or cause adverse modification to designated critical habitat. Subsequent to these actions, no further Section 7 consultation is required, nor may it be compelled for state issued permits. Under this unique framework, the programmatic consultation must be accompanied with an incidental take statement in order to comply with both Section 7 of the ESA as well Title 4 of SMCRA.⁹

Programmatic analyses of this nature were contemplated in the 2015 rule, stating in the preamble that "...if an action agency designs a programmatic action and provides adequate information to inform the development of the biological opinion with an incidental take statement covering future actions implemented under the program, the Services anticipate they will be able to provide such an opinion and incidental take statement to the action agency under this rule."¹⁰ The Services elaborated that for these mixed programmatic actions Section 7(b)(4) requires issuance of an incidental take statement.¹¹ Language reflecting this intended flexibility should be included in the final rule.

V. Applicability

Although perhaps intuitive, the analytical starting point for Section 7 consultation is to determine if consultation is required in the first instance. There is no federal agency obligation to consult under Section 7 if there is no discretionary involvement or control in the proposed action.¹²

The Services are proposing potential revisions to existing Part 402.03 to preclude the need for consultation when the action agency does not anticipate take and the proposed action will: (1) Not affect listed species or critical habitat; or (2) have effects that are manifested through global processes and (i) cannot be reliably predicted or measured at the scale of a listed species' current range, or (ii) would result in an extremely small and insignificant impact on a listed species or critical habitat, or (iii) are such that the potential risk of harm to a listed species or critical habitat is remote; or (3) result in effects to listed species or critical habitat that are either wholly beneficial or are not capable of being measured or detected in a manner that permits meaningful evaluation.¹³ It is the federal agency's obligation to determine if the agency's action will have an effect on listed species or critical habitat, and the proposed criteria set forth for

⁹ *Bragg v. West Virginia Coal Ass'n*, 248 F.3d 275, 289 (4th Cir. 2001) citing 30 U.S.C. § 1253(a), § 1252(e)

¹⁰ *Id.* at 26836.

¹¹ *Id.* at 26838.

¹² see 50 C.F.R. § 402.03. See also *National Association of Homebuilders v. Defenders of Wildlife*, 551 U.S. 644, (2007) ("we read § 402.03 to mean what it says: that § 7(a)(2)'s no-jeopardy duty covers only discretionary agency actions and does not attach to actions (like the [Clean Water Act] permitting transfer authorization) that an agency is *required* by statute to undertake once certain specified triggering events have occurred").

¹³ 83 Fed. Reg. 35183, July 25, 2018

comment provide clear guidance on the Section 7 consultation triggers. NMA supports these proposed revisions.

Section 7 consultation is not required for federal agency actions not likely to jeopardize the continued existence of listed threatened or endangered species or result in destruction or adverse modification of critical habitat.¹⁴ Additionally, the current regulations do not *explicitly* state that consultation is not required on actions that they determine have no effects on listed species or critical habitat, and an evaluation of the current regulations makes it clear that no consultation has ever been contemplated for these “no effect” situations. The suggested amendment will make it clear that if a proposed federal agency action will not affect listed species, the inquiry over whether to proceed to Section 7 consultation concludes. Consulting on these actions – for fear of litigation or other reasons - detracts agency resources from those actions that in fact risk a finding of jeopardy or adverse modification, and all while delaying project approval and increasing costs for project proponents.¹⁵ The Services should clearly establish this point in the final regulations.

As the Services acknowledge, consultation for actions that are far removed from any potential for jeopardy or destruction or adverse modification of critical habitat does little to accomplish the intent of section 7(a)(2)— to ensure that any action authorized, funded, or carried out by a federal agency is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat.

Determining the potential impacts to listed species and critical habitats stemming from global processes is often highly uncertain, and more importantly, scientifically speculative. In order for section 7 consultation to be fruitful and to avoid initiating consultation for every agency action regardless of how unlikely the chances of jeopardy or adverse modification, potential impacts to listed species and their habitat needs to be predicted with some degree of reliability. The further removed from the agency action potential impacts are the less reliable the analysis becomes. In the absence of clear guiding principles on how attenuated potential impacts are too remote or unlikely to reliably calculate, in recent years the default position for action agencies and the Services has been to initiate consultation. This result is not required by the ESA and is inconsistent with the permitting streamlining goals of EO 13777. The Services should clarify that if the effects of a proposed action are manifested through global processes and cannot be reliably predicted or measured at the scale of a listed species’ current range, consultation is not triggered under section 7 because no jeopardy finding can be supportably made.

For circumstances where the impacts to listed species or critical habitat stemming from global processes are extremely small and insignificant, the threshold for jeopardy to continued existence of the species or destruction or adverse modification to critical habitat will not likely be crossed, and therefore requirements for consultation will rarely

¹⁴ 16 U.S.C. 1536(a)(2)

¹⁵ U.S. Fish and Wildlife Service, *Endangered Species Act Handbook*, 2-6 (March 1998)

be met. Similarly, circumstances in which the effects of an action are wholly beneficial will not trigger jeopardy to the continued existence of species or destruction or adverse modification of critical habitat and the regulations should be amended to reflect this. Where the effects of a proposed federal agency action are determined to be wholly beneficial, such actions are by definition devoid of jeopardy or destruction or adverse modification and consultation under these circumstances will result in a waste of agency resources. The regulations should be amended to reflect that upon a determination that the effects of the action are wholly beneficial no consultation is necessary.

Finally, the regulations at part 402 should be amended to clarify that the scope of consultation under section 7(a)(2) should be limited to the activities, areas, and effects within the jurisdictional control of the regulatory agency. This clarification is consistent with both the statute and the streamlining objectives of EO 13777. Section 7(a)(2) of the ESA requires federal agencies to consult with the Services to ensure that proposed actions “authorized, funded, or carried out” by the agency are not likely to result in jeopardy to the continued existence of listed species or destruction or adverse modification of critical habitat. In order to authorize, fund, or carry out an activity the action agency must have some level of jurisdictional control and/or responsibility over the activity. Activities not authorized, funded, or carried out by the action agency are not considered within the ambit of section 7 and the statute provides no framework for consultation with the Services on effects outside of their jurisdictional control.

This aspect of the law makes practical sense as consultation on such extra-jurisdictional activity would be an academic exercise at best and would ultimately have no bearing on the conservation and recovery goals of the statute, given the inability of the action agency to affect the outcome. It would also waste considerable agency resources to evaluate the potential impacts of actions an agency is has not authority to alter. Resources would be better allocated towards consultation on jurisdictional activities triggering the requirements of section 7.

VI. Informal Consultation

As noted in the regulations and Federal Register notice, there is currently no deadline for the Services to complete an informal consultation (unlike formal consultations), which by regulation should be completed within 90 days unless extended under the terms under 50 C.F.R. §402.14(e). This lack of firm timelines in some cases has led to major and unnecessary project delays from periods ranging from a few months to in extreme cases delays of years. The Services are considering whether to add a 60-day deadline, subject to extension by mutual consent, for informal consultations and are seeking comment on: (1) whether a deadline would be helpful; (2) the appropriate length for a deadline; and (3) how to appropriately implement a deadline.

Establishing deadlines for informal consultations should be part of the Services’ efforts to implement Executive Order EO-13777, “Enforcing the Regulatory Reform Agenda,” Executive Order 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects,” and Department of the

Interior Secretary's Order 3355 "Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807." We recommend that Services adopt a 60-day deadline for informal consultation to prevent unnecessary delays and ensure efficient uses of resources while providing adequate time for environmental reviews. Additionally, the 60-day deadline should apply for requests for concurrence but shorter deadlines might be considered for requests for technical assistance.

VII. Formal Consultation

The proposed revised initiation package requirements offer positive changes that will not only provide the Services with more in-depth and higher quality information to begin the consultation process, but it will also frontload much of the factfinding process and hopefully expedite section 7 consultations. Clarifying the universe of necessary documents and information at the initiation stage will avoid scenarios in which action agencies and the Services miscommunicate the necessary components of an initiation package and unnecessarily elongate the process as a result.

A. The Role of the Project Proponent in Section 7 Consultation

The Services specifically seek comment on "whether additional modifications to the interagency cooperation regulations would improve, clarify, or streamline the administration of the Act."¹⁶ The scope of potential rulemaking extends to all of part 402, the Section 7 regulations. *Id.* Accordingly, NMA offers the following observations on an appropriate and efficient level of collaboration between the Services and the regulated community as a proper function of Section 7 consultation.

1. Project Proponent Involvement at all Stages of Consultation will Result in a More Efficient, Timely, and Effective Consultation Process

Hesitation by both the action agency and Services to directly involve the project proponent in the consultation process has impeded, if not completely halted the appropriate flow of scientific information. This rulemaking should directly address that process defect while maintaining the appropriate appearance and actuality of federal decision making and division of responsibility under the ESA.

NMA supports the proposed language to include information offered by the proponents on listed species in the initiation package. In our members' experience, project proponents are often engaged far too late in the process and more often than not left simply being handed a biological opinion that has already been drafted. This deprives the action agency and the Services of valuable information related to the proposal and potential impacts to listed species and critical habitat compiled by the applicant. Such information can benefit the agencies in the consultation and biological opinion drafting process, while saving time and resources for both the agencies involved and the applicant.

¹⁶ 83 Fed. Reg. at 35179

As noted in the *Endangered Species Consultation Handbook* (Handbook), "[t]he [Endangered Species Act] [S]ection 7 process achieves greatest flexibility when coordination between all involved agencies and non-federal representatives, and the Services, begins early." By law, Section 7 consultation is a cooperative effort involving affected parties engaged in analyzing effects posed by proposed actions on listed species and critical habitats. The Handbook specifically emphasizes this point, and demonstrates the latitude available within Section 7 to allow project proponents and agencies to work together during the process:

Section 7 consultation is a cooperative process. The Services do not have all the answers. Actively seek the views of the action agency *and its designated representatives*, and involve them in your opinion preparation, especially in the development of reasonable and prudent alternatives, reasonable and prudent measures, terms and conditions to minimize the impacts of incidental take, and conservation recommendations.¹⁷

Consistent with this admonition in the Handbook, the Services through this rulemaking should ensure increased coordination with applicants at other stages beyond the initiation package stage, including throughout Section 7 consultation and biological opinion preparation. Recognizing that the biological opinion is ultimately the decision of the Services in consultation with action agencies, project proponents could add significant value to the quality the consultation itself as well as drafting the biological opinion. A proposal is offered here.

2. Continuity for Project Proponent Participation in All Phases of Section 7 Consultation

Presently, the ESA regulations segregate project proponents into two classes of Section 7 consultation participants. An "applicant" is defined in 50 C.F.R. § 402.02 as anyone "who requires formal approval or authorization from a federal agency as a prerequisite to conducting the action." A designated "non-federal representative" by the lead federal agency under 50 C.F.R. § 402.08 is authorized to be a part of informal consultation and/or prepare a biological assessment. The practical distinction in status is that a project proponent designated an "applicant" by the lead agency is afforded the opportunity to participate *at the end* of Section 7 consultation process. An "applicant" is empowered to object to an extension of the time to complete consultation, see 50 C.F.R. § 402.14 (e) ("A consultation involving an applicant cannot be extended for more than 60 days without the consent of the applicant."), and a project "applicant" is afforded the opportunity to submit information for consideration during formal consultation, but it is through the auspices of the action agency, see 50 C.F.R. § 402.14 (d) ("The Federal agency shall provide any applicant with the opportunity to submit information for consideration during the consultation.")

¹⁷ Handbook pp. 1-2 to 1-3 [emphasis added].

Endangered Species Act decision making, specifically in the context of Section 7 consultation, is grounded in scientific integrity. See 50 C.F.R. § 402.14 (d) (“The Federal agency requesting formal consultation shall provide the Service with the best scientific and commercial data available...”) In the overwhelming majority of Section 7 consultations involving mining on public lands, the project proponent inherently has the most qualitative source of scientific and commercial data about the proposed action to be reviewed under the ESA by the Services. Project developers are knowledgeable about their proposed action and business model impacts on listed species and their habitat due to the overwhelming – at times crushing – resources expended to develop data before their plans of operation are approved by the federal land management agencies.

Thus, project proponents are in the best position to *directly* inform the federal action agencies and the Services to fulfill their obligations under the ESA. Project proponents are uniquely positioned with a thorough and complete understanding of the proposed action and any potential/alternative design modifications and operational procedures that, if necessitated, could reduce the impact of the action on the federally listed species and designated critical habitat. Thus, the regulations should clarify that an “applicant” has the opportunity to be involved, along with the federal agency, in all aspects of the consultation process that arise from the applicant’s proposed action. While the federal agencies must be cognizant of other laws regarding issues such as national security, classified information, confidentiality, and maintenance of privileges but when those legal policy interests diverge, the federal agencies should continue to involve the applicants to whatever extent is practicable.

Unfortunately, the current process provides limited opportunity to participate in the Section 7 consultation process, either at the front end through designation of non-federal representative status under 50 C.F.R § 402.08, or at the end of consultation as a designated “applicant” after the Biological Opinion is too advanced to appropriately influence its outcome. The recommendations provided below will result in more informed and efficient Section 7 consultations, while at the same time maintain a distinction between “applicant” status and that of a “non-federal representative”.

NMA urges the Services to add a new section in Part 402 read as follows with respect to the role of a project “applicant” in Section 7 consultation:

An applicant has a right to be involved in the consultation process consistent with the needs of the Service and the federal agency to comply with the requirements of other applicable laws such as those pertaining to national security, classified information, confidentiality, and maintenance of privileges.

Similarly, with respect to a “designated non-federal representative,” the current regulations should be adjusted to allow the designated non-federal representative to be involved in *all* levels of consultation instead of being limited to, under existing terminology, informal consultations and the preparation of biological assessments. Allowing the designated federal representative to be involved at all stages of

consultation will result in a more efficient, timely, and effective consultation process. Section 402.08 should be amended to read that:

A federal agency may, with the consent of the applicant, if any, designate a non-federal representative for all matters pertaining to consultation consistent with the needs of the Service and the federal agency to comply with the requirements of other applicable laws such as those pertaining to national security, classified information, confidentiality, and maintenance of privileges. The ultimate responsibility for compliance with section 7 remains with the federal agency.

With this two-step approach, the current treatment in Part 402 between an “applicant” and “non-federal representative” may be maintained for purposes of current regulatory construct, but the discrimination between those two designations vis-à-vis in full participation in Section 7 consultation is addressed.

VIII. Biological Opinions

A. Definitions

1. “Environmental Baseline”

The Services seek public comment on potential revisions to the definition of “*environmental baseline*” as it relates to ongoing federal actions, and specifically requests whether the following language would address these issues described in the notice (83 Fed. Reg. at 35184):

Environmental baseline is the state of the world absent the action under review and includes the past, present and ongoing impacts of all past and ongoing federal, state, or private actions and other human activities in the action area, the anticipated impacts of all proposed federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of state or private actions in the action area which are contemporaneous with the consultation in process. Ongoing means impacts or actions that would continue in the absence of the action under review.

NMA agrees that the definition of “Environmental Baseline” as it relates to ongoing federal actions needs clarification. However, we question the use of the phrase “state of the world.” Consultations typically are related to ESA listed species and their habitats and cover areas where federal actions may occur. In general, the use of the word “world” in the proposed definition implies that the study area may be larger than the action area. The term “world” also poses the potential to produce ambiguity in the NEPA process as to the appropriate boundaries of the affects areas of the proposed action.

Instead, the language should be modified as follows:

Environmental baseline is the state of the ~~world~~ action area absent the action under review and includes the past, present and ongoing impacts of all past and ongoing Federal, State, or private actions and other human activities in the action area, the anticipated impacts of all proposed Federal projects in the action area that have already undergone formal or early section 7 consultation, and the impact of State or private actions in the action area which are contemporaneous with the consultation in process. Ongoing means impacts or actions that would continue in the absence of the action under review.

B. The Construct of the Biological Opinion

1. The Format of a Biological Opinion

Section 7(b)(3)(A) of the ESA states that the Secretary shall provide the federal agency and the applicant, if any, a written statement setting forth the Secretary's "opinion." This document is referred to as the "Biological Opinion, and at an irreducible minimum, the Biological Opinion must explain the jeopardy determination and the Secretary must provide that determination to the federal agency.

The ESA does not expressly dictate the form for a Biological Opinion. The Secretary must make his or her own independent determination relative to jeopardy and destruction or adverse modification of critical habitat. The biological opinion must explain that determination, and the Secretary must provide that determination to the federal agency. Depending upon the type of consultation used and the nature of the action under consultation, a Biological Opinion could be a lengthy document with multiple appendices or it could be a simple several-page letter. For example, for a small project with relatively few impacts, a biological opinion could be a letter containing the three elements discussed above and incorporating, by reference, the federal agency's documents. However, through the years of ESA implementation by the Services, the components of a traditional (and complex) formal Section 7 Biological Opinion include the following:

- Description of the proposed action;
- Status of the species/critical habitat;
- Environmental baseline;
- Effects of the action;
- Cumulative affects;
- Conclusion;
- Analyses for jeopardy and adverse modifications; and
- Reasonable and prudent alternatives.¹⁸

Proposed § 402.14(h) clarifies the three obligations of the Secretary in providing a Biological Opinion: 1) A summary of the information on which the Secretary relied, 2) a

¹⁸ See *Consultation Handbook* at 4-15 to 4-41.

detailed discussion of the effects of the action on listed species or critical habitat, and 3) a statement concluding: a) the likelihood of jeopardizing a listed species or causing destruction or adverse modification of critical habitat; b) a “no jeopardy” opinion; or c) a “jeopardy” opinion including reasonable and prudent alternatives (RPAs) or a “jeopardy” opinion without RPAs. As discussed below, the “opinion of the Secretary,” could be better informed by incorporating by reference, the existing federal agency’s documents that intersect with the information required to sufficiently assess the effects of the action on listed species and critical habitat.

2. Information to Support a Biological Opinion

The Services’ proposal allows for the adoption of a federal action agency’s initiation package or a permit issued under section 10(a), in whole or in part, in the biological opinion. Adoption of these documents is a prudent streamlining proposal consistent with the conservation objectives of the ESA as well as the streamlining objectives of EO 13777. The analyses performed when compiling the initiation package and issuing section 10 permits often lays the groundwork for what must be considered in a biological opinion. Allowing these analyses to be folded into the biological opinion, at the discretion of the Services, enables the Services to benefit from the expertise of the action agency while avoiding the need to compile much of the same information twice.

Further, the proposed language offers the Services the flexibility needed to extract and adopt useful information in a manner that retains the proper division of roles under the ESA. NMA believes the concepts underlying this proposed discretion could similarly be used to adopt analyses compiled by state agencies and project applicants into biological opinions. Much like action agencies with jurisdiction over the activities in question, state agencies often have access to the best information regarding actions that trigger Section 7 consultation within their borders. In many cases, the quality of the data compiled by state agencies exceeds that of the federal agencies or the Services. The Western Governors Association recently articulated this policy resolution, stating:

State agencies often have the best available science, expertise and other scientific and institutional resources such as mapping capabilities, biological inventories, biological management goals, state wildlife action plans and other important data. This wealth of resources is highly valuable; the federal government should recognize, consult, and employ these vast resources in developing species listing, recovery, and delisting decisions.¹⁹

Likewise, project applicants understand their proposals best and generally have access to some of the most detailed information regarding potential impacts to listed species and critical habitat. Instead of keeping applicants separate from the process until the biological opinion has already been completed, the Services should consider expanding the adoption provisions proposed at part 402.14(h)(3)-(4) to include the adoption in whole or in part of information provided to the Services by project applicants. This would

¹⁹ Western Governors’ Association Policy Resolution 2017-11, Species Conservation and the Endangered Species

build on the utility of applicant data proposed by the Services to be included in the initiation package at revised part 402.14(c)(1)(F)(iii).

The opportunity to submit documentation developed through the NEPA process, first in the initiation package (see proposed 50 C.F.R. § 402.14 (c)(2), and then through potential adoption in a Biological Opinion (see proposed 50 C.F.R. § 402.14(h)(3)(i), rewards the rigorous data that must be developed through NEPA and affords efficiency to often identical conservation considerations underlying environmental review of proposed action.²⁰

3. The Need for Additional Information and Protecting the Project Proponent

The regulations in Part 402 should clearly distinguish between the need to provide the best scientific and commercial data available and the need to develop new data for an initiation package. Involved parties have often had confusion over when consultation has started pending the receipt of additional information, and the current language of 50 C.F.R. § 402.14(f) is not protective enough of project proponent interests in Section 7 consultation.

The proposed language below clarifies that the Service may identify information that it believes is necessary for consultation to be initiated. The federal agency would be responsible for providing the information requested, with the consent of the project proponent, or informing the Service that no further information will be provided. By placing boundaries around the exchange of communications relative to the sufficiency of information, the consultation process will proceed more quickly. Additionally, the language clarifies that, although the Services may request new data, the federal agency has no obligation to conduct new studies, and that the absence of conducting new studies would not be construed as not providing the best scientific and commercial data available.

When the Service is reviewing an initiation package and determines that conducting additional studies will result in new data that would provide a better information base from which to formulate a biological opinion, consultation may be extended but only with the concurrence of the federal agency and the applicant, if any. If there is no agreement for an extension of the period of consultation, the Service will issue a biological opinion using the best scientific and commercial data available to it. If the Service, the federal agency and

²⁰. Section 7 consultation regulations are not unique in the goal of improving conservation of listed species and the sustaining and improving the integrity of their respective habitats. The regulations at 36 CFR part 228, Subpart A (covering USDA Forest Service lands) and those at 43 CFR Part 3800, Subpart 3809 (covering USDO I BLM lands) expressly state goals of minimizing adverse environmental effects and undue or unnecessary degradation including protection of listed species and their habitats. Both sets of regulations and their respective agency handbooks and manuals for implementation provide for and strongly encourage within the implementation documents the necessity and importance of interaction of project proponents with regulatory agency resource staff in order to minimize impacts and effects throughout the permitting and subsequent exploration, development, operations, reclamation and closure phases of a mining project.

applicant (if any) agree to extend a consultation, they will work to obtain, to the extent practicable, new data that can be obtained within the agreed period of extension. The Service's request for new data is not to be construed as the Service's opinion that the federal agency has failed to satisfy the information standard of section 7(a)(2) of the Act.

IX. Reinitiation of Consultation

NMA supports the Services' proposal to amend part 402.16 to exempt land management plans under the Federal Land Policy and Management Act (FLPMA) and the National Forest Management Act (NFMA) from reinitiation of consultation when a new species is listed or new critical habitat is designated. In addition to exempting these programmatic actions from reinitiation of consultation when new species are listed or new critical habitat is designated, the Services should amend part 402.16 to allow for the exemption of reinitiation of consultation upon the listing of new species or designation of critical habitat for other programmatic actions, where appropriate.

Similar to land management plans, other programmatic actions that trigger section 7 consultation provide a basis for ongoing related action that undergo site-specific consultation or similar analysis with respect to impacts to listed species and their habitat. In these circumstances, programmatic consultations often cover a broad range of habitats and it is impractical and unnecessary to reinitiate consultation for these programmatic actions every time a new species is listed in the affected area or new critical habitat is designated. If a framework programmatic action or mixed programmatic action: 1) does not authorize, fund, or carry out an action that is likely to result in jeopardy to the continued existence of a listed species or destruction or adverse modification of critical habitat, as is the case for a framework programmatic action; 2) will be followed by a subsequent section 7 consultation that will analyze the potential impacts to the listed species or designated critical habitat before a "may affect" action occurs; or 3) has an existing programmatic biological opinion that can be supplemented to include newly listed species or designated critical habitat into an existing programmatic framework to avoid jeopardy or adverse modification, the programmatic action should be eligible for exemption from reinitiation of consultation under section 7 when a new species is listed or critical habitat is designated.

Finally, in cases where consultation is reinitiated for a proposed action which has already been substantially reviewed under prior consultation, the Services should clarify that the scope of reinitiated consultation is limited to the evaluation of new information, without triggering a need to reevaluate those issues previously addressed for the same proposal. Hecla Mining Company's Rock Creek Mine in Sanders County, Montana endured a 20-year delay from the initiation of consultation in 1998 until this year, due in large part to wholesale reinitiation of consultation after "new information" was periodically made available. The reevaluation in this instance was, largely caused by the significant passage of time due to the consulting agencies' own delay. In cases such as this, the Services should work with action agencies to expeditiously analyze new

information that bears on the “may affect” determination and incorporate that review into the previous analysis compiled for those elements of the proposal that are unchanged.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Eckman', with a long horizontal flourish extending to the right.

Adam Eckman
Associate General Counsel
National Mining Association



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240

OCT 12 2018



FMC Corporation
2929 Walnut Street
Philadelphia, PA 19104

To whom it may concern:

The U.S. Fish and Wildlife Service (Service) is writing to request your consent to an extension to complete the consultation under section 7(a)(2) of the Endangered Species Act (ESA) on the U.S. Environment and Protection Agency's (EPA) re-registration of malathion. The EPA has identified FMC Corporation, Drexel Chemical Company, and Loveland Products, Inc. as "applicants" in the FIFRA registration review and the ESA consultation. Based upon discussions with EPA, we understand that these three corporations are the "technical" malathion registrants that produce the pure active ingredient for use by their customers in manufacturing all end-use products containing malathion that are used by growers and others to control pests. According to EPA, these technical registrants for malathion are responsible for meeting EPA's data submission requirements under FIFRA. Thus, these technical registrants serve to represent the interests of all malathion registrants in the FIFRA registration review and ESA consultation process.

As "applicants," a term defined in the ESA's implementing regulations at 50 C.F.R. 402.02, these three corporations are afforded certain procedural opportunities in the ESA malathion consultation. Under ESA Section 7(b), for example, the time frames for concluding a formal consultation cannot be extended beyond 60 days without the consent of the applicant. Accordingly, as mentioned above, we are seeking the consent of the three technical registrants, FMC Corporation, Drexel Chemical Company, and Loveland Products, to an extension in the malathion consultation. Specifically, the Service estimates that a draft biological opinion will be provided to EPA for its review and release for public comment on April 2020 and that a final biological opinion will be released on March 2021.

Additional time is needed in order to continue to review the available use and usage data (including the supplemental information on national and state use and usage provided by EPA in March 2018), to assess whether such data can be further refined to a more granular scale to assess on-the ground effects to the ESA-listed species and/or critical habitat designations, and to incorporate that data in our effects analysis.

To complete the process in the time frame specified, we are committed to continue to work with EPA and the applicants in evaluating the effects of EPA's action, consistent with our responsibilities under the ESA's implementing regulations at 50 CFR 402.14. To that end, much like the Service's meeting with the applicants last month in assessing the available use and usage information, the Service will be contacting you in the coming weeks to schedule additional, topic-driven discussions.

We look forward to receiving your response to this request for an extension. If you have any questions or concerns about this request or the consultation process in general, please feel free to call me at 202-208-4646 or Deputy Assistant Director, Gina Shultz, at 703-358-1985.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gary Frazer', written over the printed name.

Gary Frazer

Assistant Director - Ecological Services

CC: Drexel Chemical Company
Loveland Products, Inc.
David Weinberg, Wiley Rein, LLP
Steve Richardson, Wiley Rein, LLP
Marietta Escheverria, EPA

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 26, 2018

The Honorable David Bernhardt
Acting Secretary
Department of the Interior
1849 C Street, NW
Washington DC 20240

Dear Acting Secretary Bernhardt,

Today documents from the U.S. Fish and Wildlife Service (FWS) obtained by the media conclusively show that 1,400 threatened and endangered species are being put on a path towards extinction by the pesticide chlorpyrifos, an insecticide that has been shown to impair neurological development in children. Many more threatened and endangered species will be put on a similar path because of diazinon and malathion, two insecticides with similar toxicological mechanisms. These documents show that efforts to address the impacts of this pesticide were indefinitely delayed shortly after you were personally briefed on the scientific conclusions of the experts at the Fish and Wildlife Service. We are writing to request that you immediately provide us the FWS biological opinions in full.

In 2016, after years of scientific review, the Environmental Protection Agency (EPA) determined that the insecticide chlorpyrifos exceeded safety standards. In order to protect against possible neurological development impacts to children, it proposed that all food tolerances for that pesticide be revoked.¹ While these efforts were occurring, the EPA, FWS and the National Marine Fisheries Service (NMFS) spent nearly four years working toward the first nationwide assessment of the impacts to endangered species from chlorpyrifos, in addition to malathion and diazinon.

In April 2016, the EPA released its initial analysis of these pesticides, concluding that both chlorpyrifos and malathion are likely to adversely affect 97 percent of all species listed as threatened or endangered under the Endangered Species Act — which includes more than 1,740 threatened and endangered wildlife and plant species — while diazinon is likely causing harm to 79 percent of all species listed under the ESA.² The nationwide assessments — the product of years of collaborative interagency work — were groundbreaking in their complexity and scientific rigor. After a period of public comment and additional review, the assessments triggered the beginning of the formal consultation process by the two wildlife agencies.

¹ 80 Fed. Reg. 69,080 (Nov. 6, 2015) (proposed rule to revoke all tolerances for chlorpyrifos).

² 81 Fed. Reg. 21,341 (April 11, 2016) (announcing availability of draft biological evaluations for registration reviews of all uses of chlorpyrifos, diazinon, and malathion for public review and comment). EPA's final biological evaluations available through three links on this EPA webpage: <https://www.epa.gov/pesticides/epa-releases-final-biological-evaluations-three-chemicals-impacts-endangered-species>

In December 2017, the NMFS released its biological opinion, which concluded that the Puget Sound resident killer whale and several dozen species of salmon and sturgeon along both coasts were jeopardized by chlorpyrifos, malathion, and diazinon.³ Unfortunately, to date, FWS has not released any biological opinion on these three chemicals. This delay is especially concerning considering FWS stated in May 2017 at the Pesticide Program Dialogue Committee that the draft biological opinions were nearly complete and would be ready for public review and public comment in the summer of 2017.⁴

Shortly before the Pesticide Program Dialogue Committee meeting, Dow Chemical and other registrants sent letters to the Department of the Interior, Department of Commerce, and the EPA requesting that the consultation process be halted and that the EPA assessments be withdrawn, claiming the science used was too uncertain and that stakeholders' concerns were ignored. However, these national assessments were the product of years of work, including multiple stakeholder meetings and public comment opportunities to address any flaws in these assessments. Considering that for nearly all other biological opinions completed under the ESA the public does not have the ability to view draft biological opinions — let alone comment on them — the level of transparency and engagement with the public was unprecedented.

While NMFS completed its biological opinion on time,⁵ FWS has still not released its biological opinion. The documents recently released pursuant to the Freedom of Information Act show that you were personally briefed on October 27, 2017, on this issue, and in the week that followed had five additional meetings with FWS career staffers. It is concerning that after receiving such important information about the harm caused by chlorpyrifos, FWS has not acted to implement conservation actions to address the threats these pesticides represent.

It has now been over two years since the EPA sent its formal request to FWS to consult under Section 7 of the ESA, and it has been nearly 18 months since you were briefed on the impacts of these pesticides. It is the Committee's understanding that FWS does not plan to produce a biological opinion during this administration with respect to malathion. The timing for the completion of the biological opinion for the other two chemicals is unclear, but it is not expected to occur until at least 2021.⁶

The ESA requires action within strict timeframes to give endangered species their best chance to recover. Allowing a consultation to drag on indefinitely under the guise of scientific refinement

³ Biological Opinion on the Environmental Protection Agency's Registration of Pesticides containing Chlorpyrifos, Diazinon, and Malathion (Dec. 29, 2017) available at: <https://repository.library.noaa.gov/view/noaa/16997>

⁴ Endangered Species Act: Section 7 Consultations and Next Steps, PPDC Meeting, May 3, 2017, Session 4e at 2, available at: <https://www.epa.gov/sites/production/files/2017-04/documents/session-4e-esa-implementation.pdf> See also U.S. Environmental Protection Agency Pesticide Program Dialogue Committee Meeting (May 3, 2017) Transcript at page 176, lines 20-22 (EPA statement of Anita Pease expecting release of the draft biological opinions "in the beginning of summer.") available at: <https://www.epa.gov/sites/production/files/2017-07/documents/may-3-2017-ppdc-meeting-transcript.pdf>

⁵ NMFS completed its biological opinion on December 29, 2017, as promised and as required by court order. See *Nw. Ctr. for Alternatives to Pesticides v. Nat'l Marine Fisheries Serv.*, No. 07-cv-1791-RSL (W.D. Wash. Dec. 29, 2017) (Notices, ECF Doc. Nos. 69-70).

⁶ Frazer, G. (2018, October 12). FWS to Registrants Requesting Delay on Malathion to 2021 [Letter to Drexel Chemical Company]. Washington, DC.

merely compounds harm to the endangered animals and plants most impacted. It is important for the Committee to understand if and how these delays are justified, considering the fate of hundreds of endangered species hangs in the balance.

To assist the Committee's oversight of these issues, please provide the following documents and information as soon as possible, but no later than April 15, 2019:

1. Biological opinions for chlorpyrifos, malathion, and/or diazinon. The Committee requests the most complete versions of the biological opinions, rather than early drafts.
2. Documents [or a detailed written explanation by the Fish and Wildlife Service] sufficient to show estimated completion dates for the three biological opinions.

Please contact the Water, Oceans, and Wildlife Subcommittee staff at (202) 225-6065 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Raúl M. Grijalva
Chairman
Committee on Natural Resources



Jared Huffman
Chairman
Subcommittee on Water, Oceans, and Wildlife



Nydia M. Velázquez